The Solicitors' Journal

VOL. LXXXII. **Saturday, May 28, 1938.** No. 22

Editorial, Publishing and Advertisement Offices: 29–31, Breams Buildings, London, E.C.4. Telephone: Holborn 1853.
SUBSCRIPTIONS: Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.
Annual Subscription: £2 12s., *post free*, payable yearly, half-yearly, or quarterly, in advance. *Single Copy:* 1s. 1d. *post free.*
CONTRIBUTIONS: Contributions are cordially invited, and must be accompanied by the name and address of the author (not necessarily for publication) and be addressed to The Editor at the above address.
ADVERTISEMENTS: Advertisements must be received not later than 1 p.m. Thursday, and be addressed to The Manager at the above address.

Current Topics.

The Lord Chancellorship.

THE statement by LORD MAUGHAM last week in the House of Lords, in the course of a political debate on mining royalties, that he had occupied his present office for a very short time and—to use his own words—"it may be that I shall not very much longer continue to occupy it," has naturally aroused not a little speculation, both in political and legal circles, whether this forebodes an early demission of his high office. Adverting to this, the usually well-informed writer of the political notes in *The Times* says that while it is known that LORD MAUGHAM much prefers the legal to the governmental work of his department, finding the latter in some ways a burden, it is nevertheless not necessary to take the words he used in the course of the debate *au pied de la lettre*, and to assume an early resignation. In the past history of the office of Lord Chancellor there have been several instances both of long and short tenure. The EARL OF HARDWICKE, one of the greatest masters of equity, occupied the woolsack for something like twenty years; LORD ELDON, like the Provost in the old Scotch song, seemed to be perpetual, going on for a quarter of a century and filling by his decisions volume after volume of "Vesey's Reports"; while, nearer our own times, LORD HALSBURY held the Great Seal for sixteen years. Since he passed away from the legal scene, his successors in office have enjoyed a much less extended period: LORD BUCKMASTER little over a year; LORD HALDANE about four years; LORD FINLAY two; LORD CAVE six; LORD SANKEY about four; LORD BIRKENHEAD four; and LORD HAILSHAM the same. Of ex-Lord Chancellors two only survive, LORD SANKEY and LORD HAILSHAM.

The Law of Libel.

SOME time ago we made reference in these columns to a Bill which was drafted by Mr. KENNETH HENDERSON, and had for its object the reform of the present law of libel. The Bill failed to secure discussion in Parliament and as an alternative to its re-introduction in its original form Mr. HENDERSON obtained the advice of Mr. VALENTINE HOLMES, who has drawn up a revised measure. This provides, in substance, that except where a plaintiff proves actual financial damage no action shall lie unless the words complained of (*a*) impute sexual immorality, drunkenness or cruelty; or (*b*) charge the plaintiff with having committed an offence punishable by imprisonment, or impute that the plaintiff has an obnoxious contagious disease; or (*c*) are published of the plaintiff in relation to his or her office, profession or trade, or in relation to his or her conduct in performance of a public duty. Moreover, unless a judge certifies to the contrary, it is proposed that so far as actions within paras. (*a*) or (*c*) are concerned the plaintiff shall not recover more costs than damages. A further clause is to the effect that, in libels published after the proposed Act, proof that at the date of the publication the defendant had no reasonable ground for supposing that the words complained of referred to the plaintiff shall be a defence. The next clause would render privileged newspaper reports of proceedings to which the public is admitted or documents to which the public has access, provided the subject-matter is of public interest and the report is not proved to have been published maliciously; but the protection intended to be afforded by this clause is not to be available in any proceedings where it is proved that the defendant has been requested to insert in the same newspaper a reasonable letter or statement by way of contradiction or explanation of such report and has refused or neglected to do so. It is further provided that a meeting of shareholders of a public company shall be deemed to be a public meeting within the meaning of s. 4 of the Law of Libel Amendment Act, 1888. The proposals give rise to wide controversial issues which cannot be discussed here, not the least important of them being the particular matters selected for special protection. It is generally recognised that additional protection might well be accorded to the victims of purely speculative actions, but it may be suggested that, in an age somewhat prone to reckless statement and idle curiosity concerning the private affairs of others, it would be matter for regret if some alteration of the law were to lead to a decreased sense of the value of a good reputation (or to a decreased sense of responsibility on the part of those in a position to injure it), and were even to mitigate the measure of protection now afforded by the law to those who by some past act may in some measure be said to have forfeited the same.

The Evidence Bill.

A SUBSTANTIAL saving of time and expense to litigants should result from the bringing into effect of the provisions contained in the Evidence Bill which was read a third time in the House of Commons about a week ago. The Bill, which was originally introduced in the House of Lords by LORD MAUGHAM before he was appointed Lord Chancellor, and has the support of the legal societies, effects an important change in the present rules of evidence concerning the admissibility of documentary evidence, and provides that documents made at the time of an act which subsequently becomes the subject of litigation shall be allowed to be put in evidence, notwithstanding that the person who made the document is still alive. The Attorney-General observed that the present law resulted in witnesses having to be called quite unnecessarily, and as an example drew attention to the fact that, if it were necessary to prove what the rainfall at Kew was a year ago, this could not be proved technically under the present rules unless the man who made the record, as well as the record, was produced in court. There was, he said, a whole category of records, documents and memoranda of a more or less formal kind made in the ordinary course of business which would be affected by the proposed change. Mr. W. P. SPENS, K.C., alluded to difficulties occasioned by persons who made the records it was desired to produce being abroad, and to the fact that, in the great majority of civil cases, and in commercial cases, by agreement, a great mass of documents of the kind affected by the measure were admitted every day. He also stated that this was the only country in Europe which refused to admit in evidence documents made by a person still living if that person could not be called and cross-examined. Readers are in a position to appreciate, in a manner which the general public perhaps cannot, the safeguards enshrined in many rules of evidence which at first sight appear somewhat arbitrary. But the foregoing appears to be one of those cases calling for some relaxation, and the passing of the measure with full legal support—to say nothing of the fact that it originated in Parliament with the present Lord Chancellor—provides an interesting and informative example of how the legal profession is in a position to effect a far-reaching, if unobtrusive, reform.

A Rural Housing Problem.

AN interesting point raised in the House of Commons last Monday, when the Housing (Rural Workers) Amendment Bill was being considered on report, deserves brief mention. The mover of an amendment to insert a new clause to give local authorities power to consider, and make it imperative on them to consider, the means of an applicant under the measure, objected to the handing over of public money to persons who did not need it to do what, he said, they had every moral obligation to do now. We imagine that most of our readers would entertain the strongest objections to a measure for the subvention of landlords by public money, and it is indisputable that both the spirit and letter of the Bill are contrary to any discrimination being made between those who require monetary assistance in renovating their cottages and those who do not. Indeed, evidence tendered to the Rural Housing Sub-Committee of the Central Housing Advisory Committee by the Central Landowners' Association suggests that such discrimination in the past has had unfortunate results on the extent to which the existing Housing (Rural Workers) Acts have been utilised. The absence of any discrimination in the Bill between the wealthy and the needy should, however, be considered in association with two other factors The first is that in many cases the renovation of a cottage may well be a less costly proposition from the point of view of the public funds than the provision of a new one—to say nothing of its greater attraction in the eyes of those who desire to preserve the traditional features of the English countryside. It may be recalled in this connection that, according to the evidence of the Council for the Preservation of Rural England before the above committee, reconditioning is normally a more economic proposition than demolition and replacement from the point of view of owner, tenant and local authority. An old cottage could normally, it was said, be satisfactorily reconditioned for about £200 and would then last as long as a new one. It is hardly necessary to stress the fact that such considerations are of particular significance in agricultural areas where cottages may frequently be let at uneconomic rents. The second factor which has been alluded to is that under the measure the financial benefit is designed to operate substantially in favour of the occupant. It is impossible at this stage to review the detailed provisions of the Bill which have already been treated at some length in these columns, but we think that the statement of the recently appointed Minister of Health on the matter will be generally regarded as a fair summing-up of the position. Mr. ELLIOT said that they were going a long way to meet the point about the wealthy person deriving benefit from the Bill by imposing a servitude on a person accepting benefit from which it would be impossible for him to liberate himself without the consent of the local authority, the Minister, and the House.

Preservation of Coastal Amenities.

A NUMBER of interesting suggestions are made in a recent report of the Coastal Preservation Committee appointed by the Commons, Open Spaces, and Footpaths Preservation Society, the National Trust, and the Council for the Preservation of Rural England. From the legal standpoint perhaps the most interesting recommendation is that in connection with the foreshore or that portion of land which is alternately covered and uncovered with water at high and low tide. Readers will remember that an owner of land adjoining the sea owns the shore down to the point reached by an ordinary high tide, but beyond that point the shore is vested in the Crown or its grantees (*Lowe* v. *Govett* (1832), 3 B. & Ad. 863), the public generally enjoying a right of passage in boats and of fishing during such time as the foreshore is covered with water. The Committee proposes that, subject to the considerations of national defence, the enjoyment of the foreshore by the public for air and exercise should be made a statutory right, irrespective of whether it is owned by the Crown, a local authority, or a private person or body. It is also proposed that no part of the foreshore should be disposed of by the Crown or the Duchies of Cornwall or Lancaster, except by way of lease to somebody capable of holding it for the public, such as the National Trust. A not less urgent matter from the practical standpoint is the despoliation of coastal lands by unregulated building and the dumping of horrors in the shape of bungalows, huts, camps, stalls and the like. In this connection it is of interest to note than the Committee's inquiries have elicited the fact that of rural planning schemes affecting coastal lands only 30 per cent. have reached the "draft-adopted" stage, the corresponding percentage of urban schemes being 55. It is stated that adequate acquisitions or reservations in rural areas are proving difficult to obtain for lack of financial resources, and that meanwhile undesirable development is continuing, and public access to the shore, cliffs and the coast generally is on a precarious basis. It is urged, *inter alia*, that the practicability of applying the principles of the Restriction of Ribbon Development Act 1935, to coastal areas should be explored, the coast being just as deserving of protection from ribbon development as a highway. This may well be the case, though the safety factor which is one of the principal objections to this development along the roadside and involves restrictions and not facilitation of access is absent in the case of coastal lands. That there is much to be said for the imposition of special restrictions in the case of such lands on grounds of their particular characteristics will, however, hardly be doubted; but in this, as in so many other cases, where it is proposed to confer some benefit upon the public at large the rights of individual owners to reasonable compensation should not be forgotten.

The Leasehold Property (Repairs) Bill.

We have already dealt in these columns with the principal contents of the Leasehold Property (Repairs) Bill and pointed to the practices which have rendered such a measure necessary. Allusion should be made to certain minor, though from a legal standpoint not uninteresting, amendments which were accepted by the House of Commons when the report stage was taken on 20th May, and, in view of our previous treatment, this may be done very shortly. The first of them increases the period given to the lessee to serve a counter-notice from twenty-one to twenty-eight days; the second, moved on the advice of The Law Society, excludes from the operation of cl. 7 property held on a perpetual lease in the form of a fee farm rent. This amendment also defines a long lease as one for twenty-one years or more. It may also be of interest to note that on third reading, which was taken immediately after the report stage, the Attorney-General observed that the Bill was a sufficient and adequate safeguard against the evil which had been complained of, and that when it became an Act the abuses would cease.

Divorce for Insanity: Evidence.

The attention of readers should be drawn to an important note which appeared in Wednesday's *The Times* in respect of the evidence required in cases where a petitioner is seeking a decree of divorce under the Matrimonial Causes Act, 1937, on the ground that the respondent is of incurably unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition (see ss. 2 and 3 of the Act). The note states that, in a case in the Divorce Court on the previous day, the learned President commented on the fact that a medical superintendent, who had only been in office in a mental hospital for a few weeks, was called on to give evidence relating to the mental condition of the respondent, who was an inmate of the hospital, when there was available a medical officer who had been there for over twenty years. The President, it is said, added that he wished it to be clearly understood that the court would expect the best possible evidence with regard to a respondent's mental condition from the place where the respondent was detained.

The County Court Districts Order 1938.

The attention of readers is drawn to the County Court Districts Order, 1938, the body of which is set out on p. 438 of the present issue. Section 2 of the County Courts Act, 1934, provides that county courts shall continue to be held for the districts and at the places and by the names appointed at the commencement of the Act under the Acts repealed thereby, but empowers the Lord Chancellor to make alterations from time to time by order, the consent of the Chancellor of the Duchy of Lancaster being required so far as that district is concerned. The new order sets out in a schedule of some 270 pages the various county court districts and defines their respective areas by reference to parishes and, in the case of London, by a description of the boundaries. Alterations effected in the West Riding of Yorkshire are set out in the body of the Order, and except as regards that district where the County Courts (Districts) Order in Council, 1899, as amended by subsequent orders, including that now being described, has effect, all orders by virtue of which the existing county court districts are constituted are to be revoked. The order comes into force on 1st June.

Recent Decisions.

In *McCarthy* v. *British Oak Insurance Co., Ltd.* (*The Times*, 21st May), Atkinson, J., held that a car, driven on an evening excursion by one who was paid by friends accompanying him a small sum for petrol and oil, was being used for a social, domestic and pleasure purpose and not for hire, and that the defendant company, as insurers of the car by a policy excluding risks when the car was used for hire, were liable to the plaintiff for the amount of damages and costs awarded him in an action brought against the driver in respect of an accident in which they were involved. *Wyatt* v. *Guildhall Insurance Co.* [1937] 1 K.B. 653, distinguished.

In *The Theems* (*The Times*, 21st May), where the plaintiffs had obtained a decree of limitation in respect of damages arising out of a collision (see note on p. 403 of our last issue) Bucknill, J., held that the appropriate rate of interest was 4 per cent. or that obtaining in the case of a judgment debt (see Ord. XLII, r. 16). In such a case the damages were limited by statute and interest was awarded not as damages but on the principle that the wrongdoer had been in possession of money due to the innocent party, and, having had it, had made use of it (*The Dundee*, 2 Hagg. Adm. 137).

In *Attorney-General* v. *Prossor* (p. 433 of this issue), the Court of Appeal (Sir Wilfred Greene, M.R., and Scott and Clauson, L.JJ.), upheld a decision of Porter, J., to the effect that a writ of subpœna issued under the Crown Suits Act, 1865, had been duly served out of the jurisdiction under s. 37 of that Act without any application to the court, the provisions of the Act in this respect not having been affected by the amendment introduced into Ord. LXVIII, r. 3, which, it was contended, had the effect of substituting the provisions of Ord. XI for those of s. 37 of the Act.

In *Re Smith, Deceased: Walker* v. *Battersea General Hospital* (p. 434 of this issue), Simonds, J., held that a gift of residue "for the assistance of such schemes of the Church Army and the Salvation Army and in such amounts as my executors shall in their absolute discretion think fit" was a good charitable gift in favour of the Church Army and the Salvation Army. It was intimated that the defined objects of these bodies were charitable and, although it might be possible to discover among the vast variety of activities some particular activity which taken by itself might not be regarded as strictly a charitable object, the matter must be looked at as a whole.

In *Perkins, M.B.*, v. *Perkins, H. B.* (*The Times*, 24th May), Bucknill, J., held that the subsequent remarriage of a wife who had obtained a decree of divorce against her former husband on ground of his adultery was a factor to be taken into account in considering her financial position with reference to maintenance, and the learned judge accordingly reduced a maintenance order for the payment of such sum as, after deduction of income tax, would amount to £500, from that amount to £350. See *Sharpe* v. *Sharpe* [1908] P. 20; *Hulton* v. *Hulton*, 33 T.L.R. 137; *Fisher* v. *Fisher*, 2 S. & T. 410; *Sidney* v. *Sidney*, 4 S. & T. 178; *Wood* v. *Wood* [1891] P. 272.

In *Re a Debtor* (*No.* 21 *of* 1937) (*The Times*, 24th May), the Court of Appeal (Sir Wilfrid Greene, M.R., and Scott and Clauson, L.JJ.) reversed a decision of the Divisional Court in Bankruptcy (Luxmoore and Morton, JJ.) which had held that the court was entitled to go behind a county court judgment against a married woman to ascertain if there was a debt of £50 or over incurred since the coming into operation of the Law Reform (Married Women and Tortfeasors) Act, 1935. The judgment was for £73 5s., and costs, in respect of various purchases only one of which, of £5 5s., was made prior to the Act, and the Court of Appeal held that the judgment could not be "enforced in bankruptcy" within the meaning of s. 4 (i) (*c*) of the Act.

In *Timms, D. T.* v. *Timms, A. W. B.* (*by her Guardian*) (*The Times*, 25th May), the first case of its kind, Sir Boyd Merriman, P., granted a husband petitioner a decree *nisi* of divorce under the Matrimonial Causes Act, 1937, on the ground that the respondent was incurably of unsound mind and had for five years immediately preceding the presentation of the petition been under care and treatment within the meaning of s. 3. The petitioner was ordered to pay the costs of the Official Solicitor who was the respondent's guardian *ad litem* and had made the necessary inquiries.

Minimum Payment Clauses in Hire-Purchase Agreements.

THE Hire-Purchase Bill, which recently passed its third reading in the House of Commons, will, when it becomes law, apply to hire-purchase agreements which relate to livestock, under which the hire-purchase price does not exceed £500, and to other hire-purchase agreements only where the hire-purchase price of the goods to which they relate does not exceed the sum of £100, or £50 in the case of motor vehicles and accessories, railway wagons and rolling stock. With regard to these agreements, cl. 4 provides that the hirer shall, at any time before the final payment under a hire-purchase agreement falls due, be entitled to determine the agreement by giving notice of termination in writing to any person entitled or authorised to receive the sums payable under the agreement and shall, in determining the agreement in this way, be liable to pay any sums payable under the agreement and unpaid at the date of the termination, and the amount, if any, by which one-half of the purchase price exceeds the total sum paid by or on behalf of the hirer under the agreement, or such less amount as may be specified in the agreement. The clause also provides that where a hire-purchase agreement has been determined in this way the hirer shall, if he has failed to take reasonable care of the goods, be liable for damages for the failure. Under cl. 5 (*b*) any provision in any agreement whereby (*inter alia*) any liability in addition to the liability imposed by this Act is imposed on a hirer on the termination under the Act of the hire-purchase agreement is void. Clause 5 (*c*) also avoids any provision in an agreement whereby a liability is imposed on a hirer on a termination by the owner of the hiring, which exceeds the liability which would have been imposed on the hirer if he had determined the agreement under the Act. These clauses deal with the "minimum payment clause" in hire-purchase agreements under which hirers are liable under their agreements to pay sooner or later a minimum sum. It will be seen that the Bill when it becomes a law will not affect minimum payment clauses in agreements relating to livestock where the hire-purchase price is over £500 or other agreements where the hire-purchase price of the goods hired is over £100, or over £50 in the case of motor vehicles and accessories, railway wagons and rolling stock, nor will it affect cases where the hirer terminates the agreement otherwise than by notice in writing under the Act. In other cases a maximum sum is fixed by the Bill which may not be exceeded in the minimum payment clause.

An interesting and important recent decision in the Court of Appeal (*Associated Distributors Ltd.* v. *Hall*, 82 SOL. J. 136; 54 T.L.R. 433) settles a point of some difficulty with regard to this clause. The case was an appeal from the county court. Clause 5 of the agreement in question gave the hirer the right to terminate the hiring by returning the goods, and cl. 7 provided: "In the event of this agreement or the hiring being determined for any cause whatsoever, no allowance, return, credit or payment shall be allowed or paid to me, but I will pay to you by way of compensation for depreciation of the goods in addition to any other sums payable hereunder such sums as with the amount previously paid for rent shall make up a sum equivalent to not less than one-half of the total amount, including the option purchase price payable under this agreement." The hirer returned the article hired after paying one instalment. Some instalments were in arrear and the hire-purchase company sued for these as well as an amount to make up half the purchase price under cl. 7. The county court judge held that this latter sum was a penalty and irrecoverable.

In the course of argument, counsel said that the minimum payment clause was probably familiar to most hirers and without it hire-purchase business would be impossible. Lord Justice Clauson suggested that the owners should state in plain terms on the face of the contract in red ink: "Minimum payment clause: The least sum payable by the hirer under this contract will be £...." He added that it might then be that some of the more prudent young men would refrain from becoming hirers.

The decision of the county court judge was reversed by the Court of Appeal on the clear ground that as there was no default or breach of the agreement the question of liquidated damages or penalty did not arise. Lord Justice Clauson repeated what he had said in argument, adding that a statement to that effect in the hire-purchase agreement would save misunderstanding and conduce to the reputation of hire-purchase people as honest traders.

To Lord Justice Clauson's criticism of the minimum payment clause there can be no answer. It is true, however, that the question of liquidated damages or penalty sometimes has arisen in these cases, and might have been raised in this typical case under cl. 6, which provided "if I (the hirer) default in payment of any sums due hereunder or if I commit any breach of any term or condition of this agreement you (the owner) may determine the hiring and forthwith resume possession of the goods . . . nevertheless I shall remain liable to you for any sums due under this agreement and for any antecedent breach of any terms hereof."

A number of cases have been reported in "Jones and Proudfoot's Notes on Hire Purchase Law," 2nd ed., 1937, at pp. 107–115 and 118–132, which bear on this question and which were quoted in the course of the argument.

The first was *Elsey & Co., Ltd.* v. *Hyde* (9th June, 1926, at p. 107). In this case the hirer having become in arrears with his payments, the owner purported to terminate his agreement by notice in writing requiring the return of the goods within three days or their purchase within that time for £75 12s. The Divisional Court held that this was a proper termination of the hiring. The action was for the difference between the amount already paid and £25, plus certain small sums for repairs and expenses.

Clause 6 provided that the hirer agreed to pay on return or retaking possession by the owners within eight months of the date of the agreement such further sum as with amounts previously paid should amount to £25 by way of compensation for depreciation of the article. The machines in question were bought for a sum of about £30 each, and it would have taken about 12½ months for the hire purchase to have been completed.

The point that if the hirer terminated the agreement voluntarily there was no breach and therefore no question could arise as to whether a sum agreed to be payable for depreciation was a penalty or liquidated damages was carefully put by Mr. Justice Salter. He added however: "It appears to me to be a strange conclusion, if this money is to be regarded as a penalty where it was payable in one event, and not regarded as a penalty where it was payable in another event. I think, therefore, as it is to my mind not a penalty where it is payable on the return of the article by the hirer, it ought not to be regarded as a penalty where it was payable on the retaking of the article by the owner." His lordship mentioned a further case in which the sum could not be a penalty, i.e., where the owner retakes under an agreement giving him a right to do so on execution issuing against the hirer. No wrong is done by the hirer in such a case, and therefore no question of penalty arises. He added that the reason that they have second-hand goods put on their hands before they have received very much money for them was not because of the hirer's breach of contract in being late with his payments, but because the owners had elected to terminate their agreement. In any case, his lordship held that the sum provided for was not extortionate or oppressive, but a genuine covenanted pre-estimate of damage, and therefore recoverable on that ground also.

In *Roadways Transport Development Limited* v. *Browne and Gray* (11th May, 1927, Jones and Proudfoot, p. 118) a

sum of £100 was the " minimum purchase price," and it was held to be a genuine pre-estimate of the damage and therefore recoverable. Scrutton, L.J., said that the clause as to the payment of the £100 was made to vary according to the length of time that the purchaser used the car; the longer he has used it and the more the seller has got by way of rent the less the purchaser in default has to pay. It therefore came exactly, his lordship said, within the language of Lord Dunedin in *Dunlop Pneumatic Tyre Co.* v. *New Garage and Motor Co.* [1915] A.C., at p. 86, where he said: " The essence of a penalty is a payment of money stipulated as *in terrorem* of the offending party. The essence of liquidated damages is a genuine covenanted pre-estimate of damage "; and at p. 87: " it is no obstacle to the sum stipulated being a genuine pre-estimate of damage, that the consequences of the breach are such as to make precise pre-estimation almost an impossibility. On the contrary, that is just the situation when it is probable that pre-estimated damage was the true bargain between the parties."

There was no doubt expressed in the judgments of the learned Lords Justices in this case that there was a breach of contract, and therefore that occasion had arisen to consider the question of penalty or liquidated damages. There was actually a cancellation of the order within four days of signing the hire-purchase agreement.

The minimum price clause in *Chester and Cole Ltd.* v. *Wright* (18th February, 1930, Jones and Proudfoot, p. 124) provided that the hirer agreed " to pay should he return the motor under clause (A) hereof or the owners retake the same under clause 8 hereof before the expiration of ten months from the date hereof, such further sums as, with the total amount previously paid under clauses 1 and 2 hereof, will equal the sum of £95 by way of compensation for depreciation of the said motor." The owners retook possession of the car after the hirer's death and sued the administratrix under the minimum price clause. Lord Hanworth, M.R., seems to have taken it for granted that the question was whether the clause was a penalty or liquidated damages clause and quoted extensively from Lord Dunedin's judgment in *Dunlop's Case* (above). Lord Justice Greer, however, said: " There is no reason in law why, for a sufficient consideration, there should not be in the same document two contracts, one a contract to hire the motor car on the terms of the agreement, and another, a contract that if that agreement comes to an end, then a certain sum will be payable by the hirer; and it may very well be that the view which is, I think, the view of Mr. Justice Salter in *Elsey's Case*, which was cited before us, is the right way to look at this clause, namely, that it is not either liquidated damages or a penalty, but it is a sum payable in respect of an event, namely, the determination and end of the hiring agreement, whether that end of the hiring agreement arises from the hirer re-delivering the car back again, or whether it arises from the owner taking it out of the possession of the hirer in the events in which he is entitled to take it out." Lord Justice Greer held that the sum was liquidated damages and not a penalty, " even treating it as a payment which has reference to a breach of contract."

It is now clear from the recent Court of Appeal decision that the question of irrecoverable penalty or recoverable liquidated damages only arises where there has been a breach of the hire-purchase agreement. This is a genuine hardship on hirers where agreements provide for the payment of extortionate sums on the termination of the hiring in accordance with the agreement, for a contract which is so terminated is discharged by agreement and not by breach, and therefore the minimum purchase price clause cannot be assailed. After the passing of the Hire-Purchase Bill the law in this respect will be altered as regards contracts in which the hire-purchase price of the goods hired does not exceed £100, or £50 in the case of motor vehicles and accessories, railway waggons and rolling stock, or £500 in the case of livestock. If this right of hirers to terminate their agreements by notice in writing is brought to the attention of hirers, it will afford them ample protection in the cases to which it applies. There still remains, however, cases of hardship disclosed by the recent decision in *Associated Distributors* v. *Hall*, for which the Hire-Purchase Bill provides no remedy.

Company Law and Practice.

Some Effects of a Company's Landlord Re-entering.

NOWADAYS it is such a comparatively rare event for a landlord to terminate a lease on forfeiture by re-entering instead of invoking the aid of the court in order to take advantage of a forfeiture that the possible consequences of his so doing are apt to be lost sight of. For at least one reason that possibility should not be overlooked in the case of a company as is shown by the case of *Pugh* v. *Arton*, L.R. 8 Eq. 626, the reason being that if the landlord re-enters by reason of the winding up of the company the creditors will unless there is some special provision in the lease, be deprived of their rights to the trade and other fixtures which the tenant is entitled to sever from the freehold, but, however, he can only so sever during the subsistence of the lease. *Lyde* v. *Russel*, 1 B. & Ad. 394, was a case where the tenant had an undoubted and undisputed right to remove certain bells which had been affixed to the freehold during the tenancy, but it was held that having fixed them there and having allowed the tenancy to expire without severing them at the determination of the same, the property in the bells vested in the landlord who was entitled himself to sever them and was not liable in trover for them at the suit of his former tenant. There is, however, one slight qualification of this rule, namely, that even after the tenancy has determined, e.g., by effluxion of time, the tenant will be entitled to remove the fixtures so long as he remains in lawful possession of the premises, as by holding over as tenant at will or tenant on sufferance.

The case of *Pugh* v. *Arton* was not a case of a company being a tenant and going into liquidation, but of an ordinary landlord and tenant case with a proviso in the lease (*inter alia*) that in case the tenant should become bankrupt or assign his estate or effects or enter into any composition for the payment of his debts, the landlord might immediately or any time thereafter enter upon the premises the subject of the lease and repossess them as if the lease had never been made. The principle, however, enunciated by this case is equally applicable to the case of a company which takes a lease with a provision for forfeiture on the company going into liquidation, and the principle is that in the absence of special contract tenant's fixtures cannot be removed by the tenant's trustee in bankruptcy, or in the case of a company the liquidator, once the lease has been determined, and this is so even though neither the tenant nor the trustee or liquidator, as the case may be, had any opportunity to remove them. The result of this is that the landlord, who may have been paid the whole of the rent, will make a wholly unexpected and undeserved profit at the expense of the creditors, and contrary, one would think at any rate, to the spirit of the bankruptcy laws.

This case, which was a decision of Malins, V.-C., would be binding on any court of first instance and though the learned Vice-Chancellor had apparently no doubt as to the application of the principle, yet he felt it unfortunate that he had so to decide as appears from the concluding passage of his judgment, which is as follows: " At the same time I think this suit a most unconscionable and ungracious one, and I shall not give the plaintiff " (the landlord) " any costs, although as a general rule the costs follow the result. It appears that money was expended in putting up these trade fittings and as a professional man the plaintiff ought not to have instituted this suit."

That a different result might be arrived at when this question came to be argued in the Court of Appeal was the opinion or rather the hope of Joyce, J., expressed in the case of *Re Gladsir Copper Works, Ltd.*, [1904] 1 Ch. 819, where he says of *Pugh* v. *Arton*: " . . . I trust that the Court of Appeal, when the case comes to be discussed there, may come to a different conclusion in reference to the result of a determination of the lease by forfeiture."

In this latter case there was a similar question raised, but one which was distinguished by the learned judge from the one referred to above. Here the tenant was a limited company, though nothing turns on that fact. The lease contained a proviso for the determination of the term in the event of the company going into liquidation. The company had issued debentures, charged among other things on certain fixtures on the premises, the holders of which started a debenture-holders' action in which a receiver was appointed by the court. The receiver took possession of the premises, the subject of the lease, and obtained leave to sell the tenant's fixtures still remaining thereon, it being expressly stated in the order giving such leave that the landlord claimed no interest therein nor, indeed, had she apparently at that date any interest therein, for it does not appear from the report that a right to re-enter arose on the appointment of a receiver. After the fixtures had been advertised for sale, the company went into voluntary liquidation, whereupon the lessor demanded possession of the premises including the fixtures in question. The headnote states that it was held that the voluntary act of the company going into liquidation ought not in the circumstances to prejudice the right of the debenture-holders to remove the fixtures, but from the judgment of Joyce, J., it does not appear that the decision was influenced by the particular circumstances of this case, but that it was a rule of universal application that where a tenant surrenders his interest to his landlord that does not deprive a mortgagee or purchaser from the tenant of the rights he then possessed in reference to such fixtures as were the subject of that case, and that he still retains the right to remove them during a reasonable time and the authorities given for this proposition are the two cases of *London & Westminster Loan & Discount Co.* v. *Drake*, 6 C.B. (N.S.) 798, and *Saint* v. *Pilley*, L.R. 10 Ex. 137. In the latter of these two cases, a firm, the lessee of business premises having become insolvent, the trustee in liquidation sold the fixtures, one of the conditions of sale being that the fixtures should be cleared in two days from the sale. The purchaser allowed them to remain for a longer period than two days while he was negotiating for a new lease. That negotiation fell through and the trustee surrendered the premises to the landlord, but it was held that the purchaser of the fixtures still had a right to the fixtures he had bought on the authority of the maxim laid down in Co. Litt. 338*b*: " Having regard to the parties to the surrender, the estate is absolutely drowned . . . But having regard to strangers who were not parties or privies thereunto, lest by a voluntary surrender they may receive prejudice touching any right or interest being had before the surrender, the estate surrendered hath in consideration of law a continuance." In *Re Gladsir Copper Works*, Joyce, J., held that the passing of a resolution for voluntary winding up which brought into being the landlord's right to re-enter was equivalent to a voluntary surrender, and it may therefore be that where the lessee company is compulsorily wound up the same principle would not apply. In *Pugh* v. *Arton*, of course, it was also the voluntary act of the lessee in making an assignment for the benefit of his creditors which entitled the landlord to re-enter, and whether or not that decision may be disapproved in the Court of Appeal different considerations will arise where the lessee is made bankrupt by a creditor's petition or a lessee company is compulsorily wound up.

Similar questions of difficulty may arise where a landlord re-enters and refuses to give up the tenant's fixtures which have not been removed in cases of hire-purchase, and the position being that creditors may be deprived of their rights against the assets of the insolvent lessee and possibly also mortgagees or debenture-holders, when the forfeiture takes place by an act to which the tenant was not a party, e.g., compulsory winding up, it would undoubtedly be prudent to insert in leases to companies a provision that the liquidator or receiver shall be entitled to a reasonable time after forfeiture has taken place to remove those tenants' fixtures which the tenant ought to have removed during the continuance of the tenancy, but which, after forfeiture, the tenant without such agreement can no longer remove.

A Conveyancer's Diary.

[CONTRIBUTED.]

Words of Severance: *In re Froy.*

A SOMEWHAT curious point upon the construction of wills was discussed in *Re Froy, deceased; Froy* v. *Froy* [1938] W.N. 122; 82 SOL. J. 273. The testator, who died in 1897, directed his trustees to divide his residue into fourths and to hold one-fourth for each of his two sons absolutely; the other two-fourths were to be held for his daughters on the usual trusts for themselves for life with remainders for their issue. In the event of either daughter dying without issue her fourth was at her death to fall into and form part of the residuary estate and was to be " divided among my children then living or the issue of any deceased child." The testator left two sons and two daughters. One of these daughters had died in 1937 without issue and the proceedings arose upon the question who was to take her fourth share. At her death one of the sons was still living: the other son had died leaving an only child, and no other issue; the remaining daughter had also died leaving four children.

Simonds, J., held that the fourth share was divisible into thirds, one-third of which was to go to the surviving son, one-third to the grandson (the only child of the deceased son), and the remaining third in some way among the children of the deceased daughter. The question of interest arose as to how this last one-third of the one-fourth was to be divided. The daughter had left four children surviving her at her death, but one of them had died before the life-tenant. It was clear that in such a case as this the four children would take an interest which vested upon their mother's death; if they took such interest as tenants in common the estate of the predeceasing child would take a share; if, however, they took as joint tenants, the estate of the predeceasing child would get nothing, as there had been no severance.

There is a *primâ facie* rule of construction that, where a gift is to a class in substitution for a member of a class previously described, words of severance must be attached both to the primary class gift and to the substitutionary gift if the substituted class are to take as tenants in common. This rule has been laid down in a number of cases, of which perhaps *Re Yates* [1891] 3 Ch. 53, is the best example: compare *Re Sibley*, 5 Ch. D. 494. On the other hand, the rule did not apply in *Crossthwaite* v. *Dean* (1879), 40 L.T. 837. In that case the gift was " I give and bequeath to my niece Jane Lee the yearly interest of £1,000 Bank Stock free of legacy duty only for so long as she continues unmarried; but in case she shall marry or die unmarried then the sum of £1,000 Bank Stock is to be divided between the brothers and sisters of the said Jane Lee or their children." It was there held that the children of a deceased brother or sister would take as tenants in common, although there were not double words of severance.

In the earlier stages of *In re Froy*, Simonds, J., seems to have been of opinion that the gift was one in joint tenancy. Later,

however, his attention was drawn to *Crossthwaite* v. *Dean*' which was made the basis of a very ingenious suggestion to the effect that the primary rule that double words of severance are required does not apply to a case where the gift is very concisely stated. In such a case it was suggested that the gift might be regarded as being one " in shorthand " and that in consequence the second severance might be implied from a single set of words of severance.

Simonds, J., felt himself able to accede to this argument, which he described as " felicitous," and accordingly held that the estate of the predeceasing child was entitled to one-quarter of the amount due to the children of the deceased daughter of the testator.

The point arising in this case is one within a very narrow compass, but it is somewhat instructive. It is very often forgotten how easy it is for the best drafted will to create a joint tenancy by sheer inadvertence. Such a thing often happens where a gift over is to some person's next-of-kin. Next-of-kin are persons who normally take in certain shares among themselves, and it is therefore only too easy to forget that if the gift is to the next-of-kin as a class, words of severance must be inserted or the gift will be one in joint tenancy.

A similar danger arose in *Re Froy* and was very narrowly averted. The rule to be found in *Re Yates* is technical, and is one with which most practitioners are not altogether familiar; it has to be remembered that the difficulty is one which arises on a professionally drawn will quite as easily as on a home-made will.

That being so, it is of some interest to note the precedent and comment to be found in " Key," Vol. 2, pp. 798/9 (13th Edition). The precedent is this: " in trust for all or any my children or child living at my death and the children or child then living of any then deceased child of mine who, whether children or grandchildren, being male attain the age of twenty-one years, or being female attain that age or marry, if more than one in equal shares as tenants in common, but so that the children of any deceased child of mine shall take *equally between them as tenants in common* only the share which their parent would have taken had he or she survived me and attained a vested interest." The material comment is: " care should be taken to insert words of severance as to the shares both of the testator's children and of the children of a deceased child, to create a tenancy in common in both cases instead of a joint tenancy." The learned editors then refer to *Re Yates*. It is therefore desirable that close attention should be paid to the necessity for double words of severance in drafting a will. If, however, by some misfortune they have been left out, the gift may still be held to be a gift in common when it comes to be construed, if it can be brought within the " shorthand " principle introduced by *Re Froy*. Such a principle seems to be applicable only when it is very clear indeed that the compound gift is, as it were, given in a single breath. Such was the case in *Re Froy* and in *Crossthwaite* v. *Dean*. On the other hand *Re Yates* is remarkably little different from either of these cases. The gift there was " upon trust for all and every my said sons and daughters who shall then be living and the issue of any then dead (such issue standing *in loco parentis*) share and share alike." This gift is only distinguishable from the gift in *Re Froy* by the presence of the words in brackets, and it has therefore to be borne in mind that a very slight elaboration will defeat the " shorthand " principle.

Lieutenant-Colonel John Conway Lloyd, M.C., of Brecon, has accepted the invitation of the Prime Minister to serve on the National Fitness Council for England and Wales. Colonel Lloyd is a County Councillor and Vice-Chairman of the Brecknockshire County Council, and a member of the National Fitness Committee for Wales.

Landlord and Tenant Notebook.

Alterations, Improvements, and L.T.A., 1927, s. 19 (2).

Two actions between the landlords and tenants of certain business premises have thrown a good deal of welcome light on the effect of L.T.A., 1927, s. 19 (2), and the correct procedure thereunder. They are *F. W. Woolworth & Co. Ltd.* v. *Lambert* [1937] 1 Ch. 37, C.A., and *Lambert* v. *F. W. Woolworth & Co. Ltd.*, recently decided in the Court of Appeal and reported in our last issue at p. 414. Messrs. Woolworth were the tenants and Messrs. Lambert the landlords and will hereinafter be so referred to.

The sub-section provides that in all leases containing a covenant against the making of improvements without consent that covenant is deemed to be subject to a proviso that consent is not to be unreasonably withheld, but that the proviso does not preclude the right to require as a condition of consent the payment of a reasonable sum in respect of any damage to or diminution of value of the premises or any neighbouring premises belonging to the same landlord, and of any legal or other expenses properly incurred in connection with the consent, nor does it, in the case of any improvement which does not add to the letting value of the holding, preclude the right to require as a condition, when reasonable, an undertaking to reinstate the premises.

The object, as described by Lord Wright, M.R., in the first action, was to increase the power of lessees to make a beneficial use of the property, notwithstanding the obstruction or demands of their landlords; but, as his lordship at once added, the actual language determines the construction.

The premises which were the subject-matter of the two actions were a shop and they adjoined other premises held by the same tenant of a different landlord. The tenants' proposals aimed at making one composite shop of the two, and involved the removal of one wall and a large part of another wall, of the main staircase and of the heating and air-conditioning apparatuses, and of some of the lavatories.

Besides a covenant against alterations and additions without consent (for which no premium or increase of rent was to be charged or imposed) there was a covenant to use and preserve the premises as a first-class shop suited to the neighbourhood.

In the course of the litigation referred to, the following questions were discussed and/or decided by eight members of our judiciary: what does the sub-section mean by " a covenant against the making of improvements "; what does it mean by " improvements "; what is unreasonable refusal of consent; and how must unreasonable refusal of consent be proved.

The first action was brought by the tenants after they had made their application for consent and the landlords had demanded £7,000 in respect of damage or diminution. The tenants claimed a declaration that the refusal was unreasonable and that landlords were not entitled to withhold consent and that they (the tenants) were entitled on payment of a reasonable sum, to be determined by the court, to make the improvements without such consent. The tenants tendered no evidence of what the damage and diminution amounted to, and it was held at first instance, and unanimously by the Court of Appeal, that there was no jurisdiction to fix a reasonable sum. But on various of the other questions mentioned in my preceding paragraph Lord Wright, M.R., and Romer, L.J., disagreed with the views of Clauson, J., while Greene, L.J., dissented and approved them.

The second action was brought by the landlords after the tenants had offered to submit the question of a reasonable sum for damage and diminution of value to arbitration, which was refused, and after the tenants had renewed their application without any offer, except as to securing reinstatement and paying costs as prescribed by the sub-section, which again

met with refusal. The landlords claimed a declaration that the proposed works were not improvements, that they would amount to a breach of covenants, and that withholding of consent would not be unreasonable, while the tenants counter-claimed declarations to the opposite effect. It was held by Simonds, J., that the proposed works were improvements, but that the landlords' refusal was not unreasonable; in the Court of Appeal Slesser and MacKinnon, L.JJ., held that the works were improvements and the landlords' refusal unreasonable, while Greer, L.J., held in a dissenting judgment that the alterations contemplated did not answer to the description of "improvements."

Taking the various questions thus discussed in order, the one point on which complete agreement can be recorded is the question of what is meant by "a covenant against the making of improvements." In an earlier case, *Balls Bros. Ltd.* v. *Sinclair* [1931] 2 Ch. 325, Luxmoore, J., observed that he personally had never heard of such a covenant and held that the sub-section dealt with the particular class of covenants which would in fact restrict the making of improvements, namely, those against alterations and additions; these might or might not effect improvements, and if they did the sub-section applied. This ruling was followed by Clauson, J., in *F. W. Woolworth & Co. Ltd.* v. *Lambert*, and in the Court of Appeal Lord Wright, M.R., expressed complete agreement with the decision. The point was indeed first so decided in one of the earliest cases under the Act: *Lilley & Skinner Ltd.* v. *Crump* (1929), 73 Sol. J. 366.

The question what is meant by "improvements" is more controversial. Two aspects have been examined: whether the sub-section contemplates, in the event of conflict, improvements from the point of view of the tenant or from that of the landlord, and whether, if this be so, an alteration which derived its character as an improvement from the fact that the tenant occupies adjoining premises is within the sub-section.

On the former aspect there is substantial agreement; as in *Lilley & Skinner Ltd.* v. *Crump*, *supra*, and *Balls Bros. Ltd.* v. *Sinclair*, *supra*, it was held in these cases that the question must be regarded from the viewpoint of the tenant. But by the judgments of Clauson, J., Greene, L.J., and Greer, L.J., what was proposed in the two recent cases was not an improvement within the meaning of the sub-section at all; while Lord Wright, M.R., Romer, Slesser and MacKinnon, L.JJ., considered the enactment applicable. (The judgment of Simonds, J., delivered after those of the Court of Appeal in the first action, followed the majority judgments.)

The view that the sub-section applies is, of course, much supported by the "safeguards" provided in the shape of the right to insist on reinstatement and on payment of money in respect of damage and diminution in value. But it is right to say that the dissenting judgments are extremely provocative of thought, especially when one observes that Greene, L.J., protesting as he does against applying the sub-section to works involving removal of large slices of the demised premises, agrees that the making of an opening in a wall to give access to other premises belonging to the tenancy might be an authorised improvement, so that the question is one of degree. Greer, L.J., found it impossible to designate as an improvement anything which would make the premises unlettable as separate premises. The point is one which invites recourse to the House of Lords, and I think it will be found, on analysis, that the real nature of the difference of opinion is this: it has been decided that the question is whether the alteration is an improvement is to be regarded from the point of view of the tenant. But what is meant by "the" tenant; is it the particular covenantor or is it our old friend the hypothetical tenant likely to take the particular premises? For if what may benefit a tenant may not benefit a landlord, what may benefit a tenant may not benefit another tenant.

The position as regards unreasonable refusal is equally interesting and the guidance afforded by the two cases will be dealt with in another article.

Our County Court Letter.

EXTENT OF RIGHT OF WAY.

In a recent case at Warwick County Court (*Boyes* v. *North Rock Laundry Co.*) the claim was for damages and an injunction against the use of a plot of land, adjacent to the plaintiff's premises, as a means of access for vehicles to the defendant's laundry. The plaintiff's case was that he purchased the strip of land in 1932, when there was admittedly a right of way for passengers on foot or with barrows. Wheeled traffic of any other description could not pass over the land, which was a rubbish heap and overgrown with nettles. The plaintiff levelled the land, laid down cement, and used it to reach a storehouse. The defendants thereupon took to using it for their vans, although the land had never been used for wheeled traffic previously, as it was part of the Saltisford Common, and was too uneven. Corroborative evidence was given by seven witnesses, two of whom were aged eighty-three and seventy-nine years respectively. The defence was that coal and manure had been delivered in carts, over the land in question, at least since 1908. Prior to the plaintiff raising the point, no one had ever disputed that there was a right of way for wheeled traffic, especially as the land was once part of the common. Three witnesses (one of whom had lived in the vicinity for forty-eight years) gave corroborative evidence. His Honour Judge Kennedy, K.C., gave judgment for the defendants, with costs.

BUNGALOW'S FITNESS FOR HABITATION.

In a recent case at Weston-super-Mare County Court (*Matthews* v. *Johns*) the claim was for damages for breach of warranty. The plaintiff's case was that in September, 1937, he became the tenant of the defendant's furnished bungalow at a rent of £1 a week, which was subsequently reduced to 12s. 6d. a week. In October, 1937, the plaintiff contracted rheumatism, which he attributed to the dampness of the bungalow. The walls and windows were damp, and also the bedding and other articles. The plaintiff therefore gave up his tenancy on the 5th January, 1938. Corroborative evidence as to the rheumatism was given by two doctors, and as to the dampness by a builder. The defendant's case was that he had owned the bungalow since 1933, and had let it on fifty-two occasions without complaint. A previous tenant had again rented the bungalow, after the plaintiff had left, and her evidence was that there was no dampness and no vermin. His Honour Judge Wethered held that the bungalow was fit for habitation at the beginning of the plaintiff's tenancy. Judgment was given for the defendant with costs. It is to be noted that there is an implied warranty of fitness only in the case of a letting of a furnished house. There is no such warranty in the case of an unfurnished house or flat. See *Cruse* v. *Mount* [1933] Ch. 278.

RESCUE OF GOODS SEIZED IN EXECUTION.

At Stourbridge County Court proceedings were recently taken by the Registrar, under the County Courts Act, 1934, s. 124, against a judgment debtor and a person to whom she had sold certain goods. The latter had been seized under an execution, in respect of a judgment debt of £41 13s. The usual undertaking was given, under an agreement for "walking possession," not to part with the goods to an unauthorised person. This enabled the debtor to continue her business as a café proprietor, and certain goods (about which there was no dispute) were sold for £9 9s. The remainder were subject to hire-purchase agreements and to claims by the landlord. The debtor was warned not to part with these goods, pending investigation of the claims. The explanation of the debtor and the buyer of the goods was that, in view of what was stated in a law book (to which reference had been made) the transaction was legal. His Honour Judge Roope Reeve, K.C., held that the alleged sale was collusive. The debtor was fined £2 and the buyer of the goods, £1.

To-day and Yesterday.

23 MAY.—On the 23rd May, 1671, Sir Edward Turnour, the Solicitor-General, was appointed Lord Chief Baron of the Exchequer.

24 MAY.—Lord Sumner, who died on the 24th May, 1934, was no mere lawyer, though in judicial capacity he would rank with the very highest. No one can read his judgments without being conscious of a profound scholarship and a living literary sense salted with a wit which could often be caustic. At the Bar he had practised largely in the Commercial Court, and it was said that to hear him "even when construing so commonplace a document as a charter-party or a bill of lading was an intellectual treat." So, too, his judgments stand out among those of his contemporaries by a unique and unmistakable quality.

25 MAY.—On the 25th May, 1875, the Court of Queen's Bench had to consider some rather odd conduct on the part of an attorney. A lady having found a fifty-pound note in the road, advertised her discovery, but no owner appeared. An attorney who was consulted gravely declared that it would be a felony for her to cash it and said it should be left with him for further inquiries. He then paid it into his banking account. No owner appeared and he put off the finder with excuses. Finally he refused any satisfaction without a signed declaration that she had authorised him to cash the note, which she had not. The Court now told him to disgorge or explain.

26 MAY, 1879 and 1880, were years of terror in Russia. Repeated Nihilist outrages revealed the mighty forces at work to undermine the Empire. In a great robbery of 2,000,000 roubles from the Imperial Chest three distinguished ladies were concerned. A dynamite explosion in the Winter Palace killed ten soldiers and wounded fifty. An attempt was made on the life of Count Melikoff, head of the Supreme Executive Council. On the 26th May, 1880, a group of Nihilists found guilty of conspiracy were sentenced, some to death, some to the mines, some to hard labour. The trial revealed that subversive elements had permeated the highest ranks of society. One of the prisoners, an eminent physician decorated with five orders, had been concerned in more than one attempted assassination.

27 MAY.—On the 27th May, 1856, William Palmer, the Rugeley poisoner, was found guilty of murder and sentenced to death by Lord Campbell. Fatal though the evidence at the trial had been, he had retained his confidence even after the retirement of the jury and had passed his counsel a note saying: "I think there will be a verdict of Not Guilty." Standing in the packed court at the Old Bailey he heard the sentence unmoved. Such was the notoriety of his crime that the inhabitants of Rugeley sought the assistance of Lord Palmerston in order to change the name of the place. "Certainly," he is said to have replied, "Call it Palmerstown."

28 MAY.—On the 28th May, 1707, James Ogilvy, Earl of Seafield, was appointed Lord Chief Baron of the Exchequer in Scotland, having been previously Lord Chancellor there. After the Union with England, which he had been very active in promoting, doubts had arisen as to the validity of his old office and he had been given a new one for greater security. His practical tact as a judge enhanced his high legal accomplishments.

29 MAY.—Having regard to the sanguinary state of penal codes in the eighteenth century an astonishing state of things was revealed on the 29th May, 1762, when the Assizes were opened at Aberdeen and not one prisoner appeared to be tried. The amazed judges caused enquiries to be made and found that the gaols within the three shires of Aberdeen, Banff and Kincardine were empty, having no one in them, either for crime or debt.

THE WEEK'S PERSONALITY.

How the acceptance of a small bribe and the scandal consequent thereon led Sir Edward Turnour, then Speaker of the House of Commons, to a seat on the Bench is related by Roger North: "This gentleman had served long as Speaker of Parliament and had been useful to the Crown, and also to himself. But on the discovery of a small present made him by the East India Company, he was blown in the House of Commons. The anti-Court party took all advantages against the Court and made a mountain of this mouse for it was but a trifle. However, it lost him much of his credit and authority in the Chair which he was used to have and he thought fit to give way and not sit there longer to be exposed to the affronts which would continually be thrown at him. This made him incline to accept the Solicitor's place until somewhat better fell, and then the King was at ease. About six months after, Sir Edward Turnour was made Lord Chief Baron of the Exchequer." He held his place till his death almost five years later. The gift of eloquence seems to have been his most outstanding quality. Certainly as Speaker, he chiefly distinguished himself by the courtly style of his addresses to the Throne.

FIGHTING A CASE.

A recent cartoon in a Sunday paper purporting to illustrate the headline "Heiress in Lawsuit fights for Fortune," with a sketch of a young woman in wig, gown and boxing gloves, sparring with a barrister similarly equipped, reminds one of the most uproarious scene ever witnessed in an English court. The place was Marlborough Street Police Court. The case was a prosecution for assault. The defendant was a nobleman who had horsewhipped an editor over an article. Sir Hardinge Giffard, afterwards Lord Halsbury, appeared for the nobleman. The defence had in court a box containing papers of which the prosecutor's party were vitally concerned to obtain possession, and as soon as the adjournment was announced a rush was made for it. The ensuing fight has been likened to that for the body of Patroclus. "Noble lords, Queen's counsel, solicitors, clerks, witnesses to the number of thirty or forty were engaged in that desperate melée . . . Hats were smashed, eyes blackened, noses set bleeding, glasses broken, inkstands hurled to and fro till at last a strong body of police quelled the riot and ejected the furious combatants." Sir Hardinge, who had been using his fists vigorously in the thick of the fight, emerged bruised and perspiring, his shirt drenched with ink. The magistrate looked on helpless and aghast.

BENCH TO PULPIT.

Sir Thomas More, L.C., and Lord Alverstone, C.J., sang in the choir, the one at Chelsea and the other at Kensington, and it was recently announced that Slesser, L.J., following this tradition, had consented to preach in St. Dunstan's Church at Cranford on the feast of its patron saint. An alternation of Bench with pulpit is not common. Mr. Justice Lush (senior) preached occasionally. Judge Waddy preached quite a lot, and it is told how he had the ingenuity to rout Lockwood and some leg-pulling colleagues who had come to his chapel to hear him, with the announcement: "We will now, my dear brethren, sing the 100th Psalm, after which our brother Lockwood will address you in prayer." But before the end of the singing Lockwood had gone. Waddy's first sermon as a youngster had not met with much paternal encouragement. "I have heard your sermon," his parent had said. "There was not much theology in it." "No, father." "Nor was there much divinity." "No, father." "Nor description of Biblical character." "No, father." "Nor explanation of difficult problems." "No, father." "Nor much expounding." "No, father." "Well, Sam, don't you think there ought to have been something in it?"

Practice Notes.

COSTS IN THE COUNTY COURT.

Murray v. *Redpath Brown & Co.* [1938] 1 K.B. 449, is of great importance to county court practitioners. The Court of Appeal there decided that under the County Court Rules, 1936, the registrar, and on appeal from him, the judge has no power (as they had before 1937 in " B " and " C " taxations) to allow costs beyond those laid down in the scales.

A widow and her two daughters recovered, under the Employers' Liability Act, 1880, £600 with costs on Scale " C." In the bill of costs, " Instructions for brief " were carried on at 25 guineas, and " counsel's brief fee " at 11 guineas. The registrar taxed the items at 6 and 8 guineas respectively, the maximum—increased under the 1936 Rules—allowed under Scale " C." On appeal, the judge, holding that he had a discretion, increased the sums to 20 guineas and 10 guineas respectively. In the Court of Appeal, the claim to an increased brief fee was abandoned ; it was conceded that in the absence of a certificate at the hearing under Ord. XLVII, r. 21, the fee could not be increased. See " The New County Court Practice " (1938), at p. 700, note on r. 21 ; also *Morley* v. *Bevington* (1905), 93 L.T. 768, 769. The appeal was accordingly fought on the allowance for " Instructions for brief."

The Court of Appeal held, with regret in this case, that although the maximum fee fixed by the scale would provide " wholly inadequate remuneration," yet the judge had no power to increase the fee. Had the matter been open, observed MacKinnon, L.J., he would have agreed with Judge Dumas ; such a case as this had, perhaps, not been foreseen by the framers of the rules, for the work involved was " as considerable and as important as in many High Court actions." Yet " Instructions for brief " carry 6 guineas only, whether the amount recovered be £60 or £600. Perhaps, in view of this decision, the matter will be remedied by the Rule Committee so as to give the registrar, and on appeal from him, the judge, a certain discretion.

Order XLVII relates to costs. By r. 1 costs are in the discretion of the court " subject to the provisions of any Act or Rule." By r. 2, the scale of costs in Appendix B regulates costs. By r. 3, the registrar is the taxing officer. A lower scale and three higher scales, A, B and C, are provided in r. 5. In any proceedings where the judge certifies that *the question determined* was of importance to a body of persons, or involved a difficult question of law, or affected issues between the parties other than those directly involved in the proceedings, the judge may " award costs on such scale as he thinks fit " (r. 13). If the judge thinks that in any case counsel should have *an increased fee* beyond that specified in the scale, and he *certifies at the hearing* accordingly, it is then for the *registrar, on taxation*, to allow such larger sum as he thinks " reasonable " (r. 21 (1)). Rule 22 gives the judge power to increase the item allowed for a *plan* : see " The New County Court Practice," 1938, at p. 701. With an immaterial exception :—

> " . . . no item shall be allowed on taxation between party and party which is not contained in the scales " (r. 24).

Rule 30 (1) prescribes the fee of *an expert witness* for attendance, and also, if allowed by judge or registrar, a fee for " qualifying to give evidence." Sub-section (2) prescribes the limits of the qualifying fee and the fee for attending court. If the judge is satisfied that either fee should be increased, he may so direct. Rule 42 (1) gives the right to a party who is dissatisfied with the registrar's taxation to apply for a " review " by the judge. By sub-s. (3) " the judge may make such order as may be just."

It is clear, said the Master of the Rolls, that " there is no general discretion in the registrar to allow a fee beyond the fees laid down in the scales." With the three exceptions, viz. : counsel's fees (r. 21), plans (r. 22) and expert witnesses (r. 30), the unlimited discretion of the registrar is abolished. See " The New County Court Practice," 1938, at pp. 693, 694, notes on rr. 2 and 5. The judge, in review, is " just as much bound by the figures in the scales as is the registrar himself." The power of the judge is confined to making an order " which he thinks just having regard to the rules " (per Romer, L.J.).

COSTS IN REMITTED ACTION.

ANOTHER important decision upon costs in the county court is *Goadby* v. *Orridge* [1938], 1 K.B. 641. What is the power of the county court judge over costs in a remitted action, of the proceedings before remission ?

Section 73 of the County Courts Act, coupled with s. 47, contains the law. Primarily, the costs of a remitted action and the scale of costs are in the discretion of the court to which the action has been remitted, subject to any order of the remitting court. But the costs of the proceedings before remission are subject to s. 47. That section, specifying certain limits in the amounts recovered, enacts that where an action begun in the High Court could have been commenced in the county court, then if the plaintiff recovers less than certain specified amounts, he shall be entitled to no costs ; if he recovers a sum between certain specified limits he shall be entitled to county court costs only. But if the High Court is satisfied that there was reason for bringing the action in the High Court, High Court costs may be allowed on any scale of county court costs within the court's discretion.

In *Goadby* v. *Orridge*, His Honour Judge Ruegg had ordered the whole of the costs of a remitted action, in which the plaintiff recovered £60 (more than the upward limit specified in s. 47 (1) (*b*) (ii)), begun in the High Court, to be taxed on the county court scale. On appeal it was argued that the plaintiff, having recovered more than £50, was entitled to High Court costs of the proceedings before remission. Sir Wilfrid Greene, M.R., declared that the " primary effect " of the proviso to s. 73 is to limit the discretion of the county court judge by compelling him, *in the cases specified in s.* 47, to award either no costs or county court costs of the proceedings before remission. The court would not decide whether, *in the High Court*, the judge was not entitled to deprive a successful plaintiff of High Court costs *merely* on the ground that the action could have been commenced in the county court. But the court held that both a High Court judge and a county court judge are entitled to award only county court costs in any case where, *in all the circumstances*, the action ought to have been begun in the county court.

Books Received.

The Shops Acts, 1912–1936, *and the Factories Act*, 1937. By ALAN L. STEVENSON, B.A., of the Inner Temple, Barrister-at-Law. 1938. Demy 8vo. pp. lv and (with Index) 320. London : Hadden, Best & Co., Ltd. 15s. net.

Principles of Mercantile Law. By J. CHARLESWORTH, LL.D. (Lond.), of Lincoln's Inn, Barrister-at-Law. Fourth Edition, 1938. Demy 8vo. pp. xxxix (with Table of Cases) and (with Index) 386. London : Stevens & Sons, Ltd. 8s. 6d. net.

County Courts District Order, 1938. Royal 8vo. pp. 273. London : H.M. Stationery Office. 6s. net.

A Dictionary of Slang and Unconventional English. Supplement to the First (1937) Edition. By ERIC PARTRIDGE. 1938. Crown 4to. pp. 975–1051. London : George Routledge and Sons, Ltd. 5s. net.

Con Man. The Personal Reminiscences of Ex-Detective Inspector Percy J. Smith (late of Scotland Yard). 1938. Demy 8vo. pp. 312. Illustrated. London : Herbert Jenkins, Ltd. 12s. 6d. net.

Palmer's Company Law. Sixteenth Edition, 1938. By ALFRED F. TOPHAM, LL.M., Bencher of Lincoln's Inn, one of His Majesty's Counsel, and A. M. R. TOPHAM, B.A., of Lincoln's Inn, Barrister-at-Law. Royal 8vo. pp. clii and (with Index) 762. London: Stevens & Sons, Ltd. £1 5s. net.

Journal of Comparative Legislation and International Law. Third Series. Vol. XX. Part II. May, 1938. Edited by F. M. GOADBY, D.C.L. London: Society of Comparative Legislation. Annual subscription: £1 1s.

Tax Deduction Tables and Grossing up Tax Tables. Compiled by A. J. ALLERTON. 1938. London: Gee & Co. (Publishers) Ltd. 1s. net.

Tolley's Income Tax Tables for 1938–39. Compiled by CHAS. H. TOLLEY, A.C.I.S., F.A.A., Accountant. 1938. London: Waterlow & Sons, Ltd. 1s. net.

Jordan's Income Tax Guide, 1938–1939. Compiled by CHARLES W. CHIVERS. 1938. London: Jordan & Sons, Ltd. 6d. net.

Gibson's County Court Practice. By BERNARD PASSINGHAM, Solicitor. 1938. Royal 8vo. pp. xxvii and (with Index) 200. London: The "Law Notes" Publishing Offices. 15s. net.

The Complete Valuation Practice. By J. E. TORY, O.B.E., F.S.I., and N. E. MUSTOE, M.A., LL.B., of Gray's Inn, Barrister-at-Law. 1938. Demy 8vo. pp. xi and (with Index) 493. London: The Estates Gazette, Ltd. 22s. 6d., post free.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London, Liverpool and Birmingham.]

Obituary.

MR. P. F. C. T. CROW.

Mr. Percy Falshaw Castlereagh Thompson Crow, solicitor, of Sunderland, died on Friday, 20th May. Mr. Crow was admitted a solicitor in 1904.

MR. J. F. ELLIOTT.

Mr. John Fisher Elliott, solicitor, of Queensbury, Yorks, died on Tuesday, 17th May, at the age of sixty-two. Mr. Elliott was admitted a solicitor in 1896. He was a keen cricketer, and had been secretary of the Queensbury Cricket Club and hon. solicitor to the Bradford League.

MR. H. FROGGATT.

Mr. Harry Froggatt, retired solicitor, formerly of Macclesfield, died at Scarborough on Thursday, 5th May, at the age of eighty-three. He served his articles with Mr. Barclay, who was then Town Clerk of Macclesfield, and passed his final examination in 1876. He practised at Macclesfield until about thirty years ago, when he moved to Scarborough. Mr. Froggatt had acted as Conservative Agent at both Macclesfield and Scarborough.

MR. H. O. O. PEPPER.

Mr. Harry Oliver Oscar Pepper, solicitor, of Worksop, died recently at his office. Mr. Pepper was admitted a solicitor in 1910.

The Honourable Society of Lincoln's Inn announce the following scholarship awards:—THIRD CASSEL SCHOLARSHIP.—William Vincent John Evans, Wadham College, Oxford. CHOLMELEY SCHOLARSHIPS.—Alan Desmond Frederick Pemberton-Pigott, Queen's College, Oxford; Kenneth Graham Jupp, University College, Oxford; David Richard Thompson, Jesus College, Oxford; James Campbell, Pembroke College, Cambridge.

Notes of Cases.

House of Lords.

Beresford *v.* Royal Insurance Company, Limited.

Lord Atkin, Lord Thankerton, Lord Russell of Killowen and Lord Macmillan. 10th May, 1938.

INSURANCE (LIFE)—PROVISION THAT POLICY VOID ON ASSURED'S SUICIDE WITHIN A YEAR—*Felo de se* COMMITTED AFTER THAT PERIOD—WHETHER CONTRACT VALID—PUBLIC POLICY.

Appeal from a decision of the Court of Appeal reversing a decision of Swift, J.

The plaintiff brought an action as administratrix of the estate of her uncle against the respondent insurance company. She claimed £42,469 1s. 10d., being £50,000, less loans, on policies of assurance taken out in 1925 on his own life by the assured, who, as a special jury found, committed *felo de se* on August 3rd, 1934. The policies contained a provision that "unless it is otherwise provided in the schedule, this policy is free from all restrictions as to residence, travel and occupation, and, subject to endorsed conditions, is indisputable." One of those conditions (condition 4) made the policies void if the assured should "die by his own hand, whether sane or insane, within one year from the commencement of the assurance." The defendants contended that the policy became void because of the assured's act.

LORD ATKIN said that he entertained no doubt that, on the true construction of that contract, the insurance company had agreed with the assured to pay to his executors or assigns on his death the sum assured if he died by his own hand, whether sane or insane, after the expiration of one year from the commencement of the assurance. The express protection limited to one year, and the clause as to the policy's being indisputable subject to that limited exception, seemed to make that conclusion inevitable. There now arose the question whether such a contract was enforceable in a court of law. In his opinion, it was not enforceable. The principle was stated in the judgment of Fry, L.J., in *Cleaver* v. *Mutual Reserve Fund Life Association* [1892] 1 Q.B. 147, at p. 156. It should be noticed that, on the principle stated, it was not a question of refusing to enforce a contract made by the criminal; the doctrine avoided a testamentary gift; and it would appear to be immaterial whether or not the criminal knew of the intended gift. If he did not know, the inducement to commit the crime and the removal of the restraint against committing the crime both tended to disappear as supports for the doctrine. He (Lord Atkin) thought that the principle was that a man was not to be allowed to have recourse to a court of justice to claim a benefit from his crime, whether under a contract or a gift. No doubt the rule paid regard to the fact that to hold otherwise would in some cases offer an inducement to crime, or remove a restraint on crime, and that its effect was to act as a deterrent to crime. But, apart from those considerations, the absolute rule was that the courts would not recognise a benefit accruing to a criminal from his crime. The remaining question was whether the principle applied where the criminal was dead, and his personal representative was seeking to recover a benefit which only took shape after his death. It must be remembered that the money became due, if at all, under an agreement made by the deceased during his life for the express purpose of benefiting his estate after his death. The criminal's executor or administrator claimed as his representative, and, as his representative, fell under the same ban. The question did not directly arise, and he did not think that anything said in this case could be authoritative: but he considered himself free to say that he could not see that there was any objection to enforcement by an assignee for value before the suicide of a policy which contained an express promise to pay on sane suicide, at any rate so far as

the payment was to extend to the actual interest of the assignee. He had little doubt that, after this decision, the life companies would frame a clause which was unobjectionable; and they would have the support of the decision in *Moore* v. *Woolsey* (4 E. & B. 243), where a clause protecting *bonâ fide* interests was upheld.

The appeal must be dismissed.

The other noble Lords concurred.

COUNSEL: *Sir William Jowitt*, K.C. and *A. T. Denning*, K.C., for the appellant; *Roland Oliver*, K.C., *Harold Murphy*, K.C. and *E. Ryder Richardson*, for the respondents.

SOLICITORS: *Soames, Edwards & Jones; Sutton, Ommanney & Oliver.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

Windsor *v.* Chalcraft.

Greer, Slesser and MacKinnon, L.JJ.
9th May, 1938.

PRACTICE—ROAD ACCIDENT—ACTION AGAINST MOTOR-CAR OWNER—NO APPEARANCE BY DEFENDANT—JUDGMENT SIGNED AGAINST HIM—NO NOTICE TO HIS INSURERS—JUDGMENT SET ASIDE—R.S.C., ORD. XXVII, r. 15.

Appeal from a decision of du Parcq, J.

A motor-car owner was insured against third party liability under the Road Traffic Acts, binding himself to allow the underwriters to use his name. In December, 1936, he was involved in a collision in which a cyclist was killed. On the 22nd October, 1937, the personal representative of the deceased issued a writ against him. On the 26th October, the plaintiff's solicitors notified the underwriters, but thereafter no communication was received either by the underwriters or by their assessors or solicitors. Letters sent to the defendant on behalf of the underwriters were left unanswered. The defendant did not enter an appearance and in December, 1937, judgment was signed against him in default of appearance, damages being assessed at £2,550. The underwriters and their representatives had no notice of these proceedings till they were asked for payment. du Parcq, J., held that the judgment should not be set aside and that they should not be allowed to enter an appearance to the writ.

GREER, L.J., allowing the underwriters' appeal, said that the case was within *Jacques* v. *Harrison*, 12 Q.B.D., at p. 167. The underwriters were injuriously affected by the judgment. The defendant had not appeared in the action or on the present summons. He chose not to ask for any terms to be imposed on the setting aside of the judgment and must stand the consequences.

SLESSER, L.J., dissented.

MACKINNON, L.J., agreed.

COUNSEL: *Samuels*, K.C., and *Stephen Chapman; Pritt*, K.C., and *Engelbach.*

SOLICITORS: *L. Bingham & Co.; Theodore Bell, Cotton & Curtis.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re White; Skinner *v.* Attorney-General.

Greene, M.R., Scott and MacKinnon, L.JJ.
10th May, 1938.

REVENUE—ESTATE DUTY—TESTATOR DOMICILED IN NORTHERN IRELAND—ESTATE DUTY LEVIED THERE—ANNUITY TO WIFE—SALE BY EXECUTORS OF ESTATE OUTSIDE ENGLAND—INVESTMENT IN ENGLAND—DEATH OF WIFE—WHETHER ESTATE DUTY PAYABLE IN ENGLAND—FINANCE ACT, 1894 (57 & 58 Vict., c. 30), ss. 2 (1) (*b*), 5 (2)—FINANCE ACT, 1914 (4 & 5 Geo. 5, c. 10), s. 14)—GOVERNMENT OF IRELAND ACT, 1920 (10 & 11 Geo. 5, c. 67), s. 61—FINANCE ACT, 1936 (26 Geo. 5 & 1 Edw. 8, c. 34), s. 25.

Appeal from a decision of Clauson, J. (82 SOL. J. 136.)

By his will made in 1920, a testator who died in 1923, domiciled in Northern Ireland, left all his property in equal shares to his nephews, who were also his executors, subject to and charged with the payment of his debts, funeral and testamentary expenses, all Crown duties and the legacies and annuities bequeathed by him. One of these was a life annuity to his wife. On his death, estate duty was levied in Northern Ireland by the proper authorities on the appropriate parts of his estate. No estate duty was leviable in Great Britain because the testator's only personal estate there was of less value than £100. When the testator's widow died in 1936 the estate charged with her annuity consisted partly of investments locally situate in England and partly of investments locally situate in Northern Ireland. It also included an interest in certain unrealised real and personal estate of the testator's brother which was situate in the United States of America. The English revenue authorities claimed under the Finance Act, 1894, as subsequently modified, duty in respect of the English investments in the estate, on the ground that by virtue of s. 2 (1) (*b*) of that Act, property passing on the widow's death was deemed to include property in which she had an interest ceasing on her death. The executors contended (1) that her only right at her death was to have the residuary estate duly administered and that the forum of administration being Northern Ireland her right was locally situated there; (2) that as the estate (other than the American property) had already borne estate duty in Northern Ireland, there was a right to exemption under the Finance Act, 1894, s. 5, in respect of the English securities (save in so far as they represented proceeds of sale of the American property). Clauson, J., rejected these contentions.

GREENE, M.R., dismissing the executors' appeal, said that the first question did not depend on the statutory provisions in force relating to Northern Ireland and referred to s. 2 of the 1894 Act. If all the estate had consisted of property in Great Britain duty would have been payable, as an annuitant had an interest in a testator's residuary estate within the meaning of the section (*Attorney-General* v. *Watson* [1917] 2 K.B. 427), and the exemption would not have come into operation. It had been argued that this was so, not because the annuitant had an interest in any specific piece of property forming part of the residuary estate, but because his right being a right to have the estate properly administered, he might for that reason be said to have an interest in the entire estate. Therefore, it was said that where part only of the estate was situated in Great Britain, it could not be said that the annuitant had an interest in that part, his interest being one in the entirety consisting of a right to have that entirety administered in the proper forum. Here that was Northern Ireland. That construction of the word "interest" in s. 2, was too narrow. The word had a popular rather than a technical meaning and indicated not merely the entirety of the estate considered as a unit, but each part of it. *In the Goods of Ewing*, 6 P.D. 19, and *Lord Sudeley* v. *Attorney-General* [1897] A.C. 11, threw no light on the construction of s. 2. The deceased annuitant had an interest within s. 2 in the property situated in Great Britain. The court did not, of course, assert that for the purposes of the general law the annuitant had a right to or an interest in any particular property forming part of the estate. Nothing in *Attorney-General* v. *Johnson* [1907] 2 K.B. 885, caused the court to doubt the correctness of their decision. The second argument depended on the Government of Ireland Act, 1920, ss. 20, 21, 61, and the Government of Ireland (Adaptation of Taxing Acts) Order, 1922, Pt. I, cl. 2 and Pt. III, cl. 12. The executors claimed the benefit of the Finance Act, 1894, s. 5 (2), on the ground that estate duty had been paid in Northern Ireland on the entirety of the testator's estate (other than the American property). They relied on the definition of estate duty in s. 22 (1) (*e*) as "estate duty under this Act,"

saying that the estate duty paid in Northern Ireland was estate duty under the 1894 Act which was continued in force there after the appointed day under the 1922 Order, subject only to the adaptations therein. But the effect of the 1920 Act and the 1922 Order was to split the estate duty into two duties, one collected by the Northern Ireland executive and the other by the United Kingdom executive. The Act, including the definition clause, must be read in the light of the new situation. It had been argued by the Crown that the Finance Act, 1936, s. 25, amounted to a declaration by the legislature that under the pre-existing law the relief could not be claimed. The court expressed no opinion on this point.

COUNSEL: *Radcliffe*, K.C., and *J. Whitaker*; *J. H. Stamp*.

SOLICITORS: *Russell & Arnholz*; *Solicitor of Inland Revenue*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

British Salmson Aero Engines Ltd. *v.* Inland Revenue Commissioners.

Greene, M.R., Scott and Clauson, L.JJ.
11th and 12th May, 1938.

REVENUE—INCOME TAX—EXCLUSIVE LICENCE TO BUILD ENGINE UNDER PATENT—LUMP SUM PAYABLE BY THREE INSTALMENTS—ANNUAL PAYMENTS—ASSESSABILITY.

Appeal from a decision of Finlay, J. (81 SOL. J. 750).

By an agreement made in 1929, the company, as licensees, were granted exclusive rights for ten years to construct, use and sell certain aero engines in a defined territory. Provision was made for the free use of certain patents in use in connection with those engines. The company agreed to pay £25,000 as consideration, of which £15,000 was payable on the signing of the agreement and £5,000, six, and £5,000 twelve, months thereafter. In addition there were to be paid "as royalty" ten annual sums of £2,500. The payments made under the agreement were not made out of profits brought into charge. Finlay, J., held that the sums of £15,000, £5,000 and £5,000 were instalments of a capital sum, and that the company were not assessable in respect of them under r. 21 of the All Schedules Rules of the Income Tax Act, 1918; but that the ten payments of £2,500 were royalties or other sums paid for the user of a patent, and that the company were assessable in respect of them. Both the Crown and the company appealed.

GREENE, M.R., dismissing the appeals, said that the Crown had relied on the words "royalty or other sum paid in respect of the user of a patent" in r. 21, contending that both classes of sums payable under the agreement were so paid, and that, whether or not a sum so paid was in reality of a capital or an income nature, the language of the legislature had definitely attributed to it the latter characteristic for tax purposes. It was to be noticed that under the agreement the company not only received the right to use the patents but also were entitled to restrain the patentees from exercising it within the territory defined. The latter right was quite different from a mere right of user. It was also to be noted that in the provision as to payment there was a fundamental difference in the nature of the two classes of sums, the former being a definite and fixed lump sum payable by instalments and the latter, on the face of the agreement, yearly sums payable as royalty, their existence being from beginning to end an annual existence. The general type of payment described in r. 21 as "royalty or other sum paid in respect of the user of a patent," was of an income nature, but that enactment did not bring into charge something of a capital nature which otherwise would not have been chargeable. It did not decide the capital and income class of problem in the case of patents once and for all by declaring that every payment in respect of the user of a patent must of necessity be of a capital nature. In the case of patents, as in other matters, the fundamental question remained in respect of any particular payment, whether it was capital or income, and that depended on the particular facts of each case, including the contractual relationship between the parties. *Constantinesco* v. *R.*, 43 T.L.R. 727; 11 Tax Cas. 730, was not an authority for the proposition that the matter was concluded once and for all once you asserted that a payment was in respect of user of a patent, nor did *Mills* v. *Jones*, 142 L.T. 337; 14 Tax Cas. 769, prevent the court from examining the facts in the case of a payment made in respect of a royalty and saying what its true nature was. If its true nature was that it was a capital payment, it was not chargeable with tax. On all the facts of the case, including the terms of the contract, the decision in the court below was right.

SCOTT and CLAUSON, L.JJ., agreed.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.) and *R. Hills*; *Needham*, K.C., and *F. Martineau*.

SOLICITORS: *Solicitor of Inland Revenue*; *A. J. Adams & Adams*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Attorney-General *v.* Prossor.

Greene, M.R., Scott and Clauson, L.JJ.
18th and 19th May, 1938.

PRACTICE—ASSESSMENTS FOR SUPER-TAX AND SUR-TAX—TAXPAYER RESIDENT ABROAD—WRIT OF SUBPŒNA—SERVICE OUT OF JURISDICTION—VALIDITY—CROWN SUITS ACT, 1865 (28 & 29 Vict., c. 104), s. 37—R.S.C., Ord. LXVIII, r. 3.

Appeal from a decision of Porter, J.

For several years after failure by the appellant, who resided in France, to make a return assessments were made on him for super-tax and sur-tax on his wife's income. These he ignored, and nothing was done for thirteen years, till in 1935 a writ of subpœna for service out of the jurisdiction under the Crown Suits Act, 1865, was served on him. He entered no appearance, and the Crown obtained judgment against him, the sum in question being nearly £4,000. In 1937, while he was on a short visit to England, two bailiffs came to arrest him in respect of this debt to the Crown. With difficulty the sum was collected in cash to pay them. Porter, J., now dismissed an application to set aside the proceedings under the writ of subpœna on the ground that by virtue of R.S.C., Ord. LXVIII, r. 3, service had not been validly made.

GREENE, M.R., dismissing the appellant's appeal, said that the question was whether a certain amendment introduced into Ord. LXVIII in 1932 and now appearing as r. 3, had the effect of substituting the provisions of Ord. XI for those of the Crown Suits Act, 1865, s. 37, so far as related to service out of the jurisdiction. Under s. 37 a writ of subpœna could be sued out and served out of the jurisdiction on a British subject without application to the court. Under Ord. XI service of a writ out of the jurisdiction could not be effected without the court's leave. It had been argued that r. 3 took away the court's power to deal with proceedings under a writ of subpœna when the provisions of s. 37 were complied with and service out of the jurisdiction was made without leave of the court, and had the effect of repealing the section so far as regarded service out of the jurisdiction. But to give effect to that argument there would have to be written into Ord. XI a provision annulling the jurisdiction previously existing under the Act. However, Ord. XI was not a prohibiting order, but one extending the jurisdiction, and it could not operate to set aside the jurisdiction under s. 37. Its language could not produce the radical effect contended for. Further, Ord. Xi, r. 11, which adopted certain methods of effecting service of documents when a convention had been made with a foreign country, originally applied only when leave to serve out of the jurisdiction had been obtained. But in 1932, when Ord. LXVIII, r. 3, was introduced, there were added to Ord. XI, r. 11, the

words " or where such leave is not required." One of those cases was under the Crown Suits Act and the effect was to make r. 11 applicable to proceedings on the revenue side.

SCOTT and CLAUSON, L.JJ., agreed.

COUNSEL: *Sir Stafford Cripps*, K.C., and *Morle*; *The Attorney-General* (Sir Donald Somervell, K.C.) and *R. Hills*.

SOLICITORS: *Sutton, Ommanney & Oliver*; *Solicitor of Inland Revenue*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts.

In re a Debtor (No. 21 of 1937).

Greene, M.R., Scott and Clauson, L.JJ.
20th and 23rd May, 1938.

BANKRUPTCY—JUDGMENT AGAINST MARRIED WOMAN—DEBT INCURRED PARTLY BEFORE AND PARTLY AFTER LAW REFORM (MARRIED WOMEN AND TORTFEASORS) ACT, 1935—SUM DUE EXCEEDING £50—RECEIVING ORDER—LAW REFORM (MARRIED WOMEN AND TORTFEASORS) ACT, 1935 (25 and 26 Geo. 5, c. 30), s. 4 (1).

Appeal from a decision of the Chancery Division (82 SOL. J. 351), reversing a decision in Guildford County Court.

In 1935 and 1936, the debtor, a married woman, bought furs from the creditor to the value of £77 5s., all the transactions save one purchase to the value of £5 5s. taking place after the 2nd August, 1935, when the Law Reform (Married Women and Tortfeasors) Act, 1935, came into force. This Act made married women subject to the bankruptcy laws, so that judgments and orders could be enforced against them in all respects as if they were single. Payments amounting to £4 had been made when the creditor initiated county court proceedings to recover the balance, and on the 11th February, 1937, he obtained a judgment for £73 5s. and £5 13s. 6d. costs, in accordance with Form No. 138 of the County Court Forms, 1936, the judgment being in form applicable to the case where the whole sum recovered was due in respect of a debt incurred after the 2nd August, 1935, and having no regard to the fact that part of the debt was incurred before that date. The judgment ordered payment by quarterly instalments of £10, but, nothing having been paid, the creditor issued a bankruptcy notice on the 27th October, 1937. The debtor having neither complied with it nor disputed its validity, a bankruptcy petition was presented on the 9th December, 1937. On the 10th February, 1938, the Registrar dismissed the petition on the ground that the judgment on which it was based was obtained in respect of a contract with a married woman for goods part of which were supplied before the 2nd August, 1935. On appeal to the Chancery Division, the Divisional Court reversed this decision. The debtor now appealed.

GREENE, M.R., allowing the debtor's appeal, said that it had been said that the judgment obtained in the county court was in the wrong form in view of Ord. 24, r. 3 (a) of the County Court Rules but the note required to be made in such a case as this was not a note in the judgment but a note in the minutes of the judgment. There was no need for a note referring to the matter in the judgment. As to the receiving order, the view of the Divisional Court that it could be made proceeded on the view that the bankruptcy notice was valid. The real question was whether that notice was good. The matter was a point of construction of s. 4 (1) (*c*) of the 1935 Act. It had been argued that obtaining the notice was only a preliminary to and not part of the proceedings to enforce a judgment in bankruptcy. Bankruptcy notices were issued by the court and an appeal might be made from the Registrar's refusal to grant one. A creditor applying for a bankruptcy notice was engaged in enforcing the judgment in bankruptcy. In the case of *In re a Bankruptcy Notice* [1927] 1 K.B., at p. 481, the construction of s. 12 of the Arbitration Act was being dealt with. Here the meaning of " to be enforced in bankruptcy " in s. 4 (1) (*c*) was to be considered. As the judgment was one which could not be enforced in bankruptcy, the notice founded on it was a nullity and no act of bankruptcy was committed by non-compliance with it.

SCOTT and CLAUSON, L.JJ., agreed.

COUNSEL: *Stable*, K.C., and *G. Kingham*; *V. Aronson*.

SOLICITORS: *Rising & Ravenscroft*; *W. A. G. Davidson & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Isherwood Foster & Stacey Ltd. *v.* Miglio.

Bennett, J. 3rd May, 1938.

PRACTICE—APPLICATION FOR LEAVE TO BRING ACTION TO REVIEW—DEFENDANT'S APPLICATION—WHETHER LEAVE NECESSARY.

The defendant to an action made an application that he might be at liberty " to bring a supplemental action in the nature of an action of review notwithstanding the order dated the 7th day of March, 1938, on the ground that since the date of the said order the applicant has for the first time discovered certain new matter material to his defence in these proceedings, and that the said order was made and obtained as the result of the misrepresentation of the facts " in an affidavit by the secretary of the plaintiff company.

BENNETT, J., said that the question was whether leave had to be given before anyone could issue a writ in an action to review, assuming such an action still existed. His lordship referred to *Charles Bright & Co., Ltd.* v. *Sellar* [1904] 1 K.B., at p. 13, and *In re Scott and Alvarez's Contract* [1895] 1 Ch., at p. 622, and said that he had come to the conclusion, without expressing any opinion whether the defendant could maintain an action to review, that the leave of the court was no longer necessary for such an action to be begun.

COUNSEL: *Laskey*, for the applicant; *Lightman*, for the respondents.

SOLICITORS: *George A. Mant*; *King, Hughes & Howse*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Smith; Walker *v.* Battersea General Hospital.

Simonds, J. 19th May, 1938.

WILL—CONSTRUCTION—GIFT OF RESIDUE—TO ASSIST " SUCH SCHEMES OF THE CHURCH ARMY AND THE SALVATION ARMY " AS EXECUTORS THOUGHT FIT—WHETHER VALID CHARITABLE BEQUEST.

A testatrix who died in 1936 without any known next-of-kin by her will gave almost all her estate to charitable objects. She gave the residue " for the assistance of such schemes of the Church Army and the Salvation Army as my executors shall in their absolute discretion think fit." The question arose whether this was a valid charitable bequest.

SIMONDS, J., said that it had been argued that it was open to apply part of the moneys to some object not strictly charitable. He must assume that the Church Army and Salvation Army would act within their defined objects—the relief of poverty and destitution and the advancement of the Christian religion, both charitable objects. In each body there was a vast variety of activities and it might be possible to discover some particular activity which, taken by itself, might be regarded as not strictly a charitable object, but the matter must be looked at as a whole. The bequest was a good charitable gift.

COUNSEL: *Eardley-Wilmot*; *Danckwerts*; *W. M. Hunt*; *Gray*, K.C., and *R. Ramsbottom*; *J. H. Stamp*; *Tillard*; *Andrewes Uthwatt*.

SOLICITORS: *Halsey, Lightly & Hemsley*; *Johnson, Weatherall, Sturt & Hardy*; *Clayton, Sons & Fargus*; *F. W. Hughes & Son*; *Ranger, Burton & Frost*; *Treasury Solicitor*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

George Hotel (Colchester) Ltd. *v.* Ball.

Branson, Humphreys and du Parcq, JJ.
13th May, 1938.

SHOP—WAITER IN HOTEL—DINING-ROOM USED MAINLY BY NON-RESIDENTS — WHETHER A "SHOP" — WHETHER WAITER A SHOP ASSISTANT—SHOPS ACT, 1912 (2 Geo. 5, c. 3), s. 1.

Appeal by case stated from a decision of Colchester Justices.

An information was preferred by the respondent, Ball, under s. 1 of the Shops Act, 1912, against the appellant company charging them with having, during a certain week in 1937, not allowed the statutory half-holiday to one, Dack. At the hearing of the information the following facts were proved or admitted: The George Hotel was principally a residential hotel, having accommodation for forty guests. It had only one dining-room, which was used by residents and non-residents for all meals. Dack was a waiter wholly employed in that dining-room, and in connection with the serving of meals to residents and non-residents. Of the meals served daily in the dining-room, the proportion served to non-residents was about 63 per cent. During the week in question, Dack was employed at his duties each weekday from 8.30 a.m. to 10 p.m. He had two hours off every afternoon, but had no holiday. It was contended for the appellants that the business of the hotel was principally that of a residential hotel; that Dack's duties were in relation to the whole business of the hotel; that the dining-room could not be designated a "shop" within the meaning of the Act of 1912; and that there was in law no evidence on which the justices could hold that Dack was a "shop assistant" within the Act. It was contended for the respondent that a part of the hotel, although it was residential, was open to non-residents; that Dack was mainly occupied with serving meals to non-residents in the dining-room; that he was wholly employed in connection with the serving of meals in the dining-room; that the dining-room was a "shop" within the meaning of the Act; and that there was evidence on which to hold that Dack was a "shop assistant." The justices held that Dack was mainly employed in connection with the serving of meals to non-residents, and was a "shop assistant" within the meaning of the Act. They accordingly convicted the company, who appealed.

BRANSON, J., said that whether the justices had come to the correct conclusion depended, first, on whether the facts proved showed that Dack was employed as a shop assistant, or, in other words, under s. 19 (1) of the Shops Act, 1912, whether he was a "person wholly or mainly employed in a shop . . ." and secondly, whether the dining-room in which he was wholly or mainly engaged could be said to be a shop. The same sub-section said, "the expression 'shop' includes any premises where any retail trade or business is carried on." There was no doubt that Dack's employment was mainly in connection with the service of meals in the dining-room. The justices had found that he was mainly employed in connection with the service of meals to non-residents. Counsel for the appellant attacked the justices' decision by saying that, once they had found that this hotel was principally a residential hotel, there was no room for the finding that any part of it was a shop, and therefore he relied on *Gordon Hotels, Ltd.* v. *London County Council* [1916] 2 K.B. 27. In his (his lordship's) opinion, the decision in that case disposed of the appellant's argument, because it was clear that the court there, so far from holding that, once there was a finding that the principal business of the premises was that of a hotel, it was impossible to find that any part of it was a shop, decided the very opposite. [His lordship referred to the judgment of Avory, J., at p. 36.] Here, once the magistrates had come to the conclusion that in this dining-room the waiter in question was mainly employed in serving non-residents, it seemed to be perfectly open to them, as a question of fact, to hold that that portion of the hotel was a shop, and that the man mainly employed in serving meals there was a shop assistant. The appeal must be dismissed.

HUMPHREYS and DU PARCQ, JJ., agreed.

COUNSEL: *G. G. Raphael*, for the appellants; *Frank Phillips*, for the respondent.

SOLICITORS: *Wilberforce Allen & Bryant*, for *F. S. Collinge and Co.*, Colchester; *Jones & Son*, Colchester.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Tinn *v.* Cunningham.

Branson, Humphreys and du Parcq, JJ.
13th May, 1938.

SHOPS—YOUNG PERSONS EMPLOYED IN—NOTICES AFFECTING HOURS WORKED BY—EXHIBITION IN FOLDER HANGING IN SHOP—WHETHER SUFFICIENT—SHOPS ACT, 1934 (24 & 25 Geo. 5, c. 42), s. 7 (2)—SHOPS REGULATIONS, 1934 (S.R. & O., No. 1325), reg. 5.

Appeal by case stated from a decision of South Shields justices.

An information was preferred by the appellant, Tinn, a shops inspector, against the respondent, Cunningham, charging him with having failed, as the occupier of a shop, to exhibit in the prescribed form and manner in the shop a notice setting forth the hours to be worked by, and the intervals to be allowed for rest and meals to, every young person employed about the business of the shop, contrary to s. 7 (2) of the Shops Act, 1934. At the hearing of the information, the following facts were proved or admitted: the respondent kept a grocer's shop, and employed two persons under the age of eighteen to work in connection with it. When the appellant called at the shop and asked the respondent to show him the various notices required to be kept under the Shops Acts, 1912–36, one of the young persons produced a number of the notices required to be kept or exhibited by those Acts or the regulations made under them. All the notices had been kept together in a folder in book-form which was hung from a hook on a door inside the shop which led to a room behind the shop. The folder could be seen by persons in the shop without their having to open that door, and they could see that the folder contained a number of papers. Form H, the abstract of the provisions of the Shops Act, 1934, relating to the hours of employment of young persons in retail shops and warehouses, could not be read without opening the folder, but it could be read without first removing it from the folder. It was possible for individual forms to be removed from the folder without difficulty for the purpose of reading them. The young persons employed in the shop had to pass the door on which the folder was hanging many times every day in the course of their duties, and they were aware of the existence of the forms. It was contended for the appellant (*a*) that the notice was not kept exhibited in the manner prescribed by reg. 7 of the Shops Regulations, 1934, which provided that any notice required to be exhibited under the regulations should be kept exhibited in such a manner that it might be readily seen and read by any person whom it affected, and (*b*) that, in order to comply with that regulation, Form H should have been posted or hung up in some prominent part of the shop so that the contents might be directly seen and read. The respondent contended that the notice was so kept exhibited as to comply with the regulation. The justices accepted that contention and dismissed the information.

BRANSON, J., said that by reg. 5 of the Shops Regulations, 1934, the notice had to "be kept constantly exhibited." He saw no escape from the conclusion that, when the statute and that regulation said that the form was to be exhibited, they were using "exhibited" in the ordinary sense of that word. He thought it impossible to hold that a form was exhibited which was included with a number of other forms

in a folder and hung up behind a door in circumstances in which it could not be seen or read without opening the folder, and when the form had to be found amongst other forms in order that it might be read. In his opinion the appeal must be allowed.

HUMPHREYS and DU PARCQ, JJ., agreed.

COUNSEL: *J. Ramsay Willis.*

SOLICITORS: *Speechly, Mumford & Craig*, for *Harold Ayrey*, South Shields.

There was no appearance by or on behalf of the respondents.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Criminal Appeal.

R. *v.* Harrison; R. *v.* Ward; R. *v.* Wallis; R. *v.* Gooding.

Branson, Humphreys and du Parcq, JJ.
10th May, 1938.

CRIMINAL LAW—CARNAL KNOWLEDGE OF GIRL UNDER SIXTEEN — ACCUSED PERSON UNDER TWENTY-THREE — REASONABLE CAUSE FOR BELIEVING THAT GIRL OVER SIXTEEN—WHETHER ACTUAL BELIEF NECESSARY TO AFFORD A DEFENCE—CRIMINAL LAW AMENDMENT ACT, 1922 (12 & 13 Geo. 5, c. 56), s. 2.

Appeals against conviction.

The appellants, all of whom were under the age of twenty-three at the material date, were convicted at the Central Criminal Court of having had unlawful carnal knowledge of a girl less than sixteen years of age, and were bound over for two years in the sum of £5. Evidence was given at the trial that none of the appellants had directed his mind to the question of the girl's age, but that there might in fact have been reasonable cause for believing that she was over sixteen years of age. By s. 2 of the Criminal Law Amendment Act, 1922, "Reasonable cause to believe that a girl was of or above the age of sixteen years shall not be a defence to a charge," *inter alia*, of unlawfully and carnally knowing any girl between the ages of thirteen and sixteen years: "Provided that in the case of a man of twenty-three years of age or under the presence of reasonable cause to believe that the girl was over the age of sixteen years shall be a valid defence on the first occasion on which he is charged with" the offence in question. It was contended for the appellants that the decision in *R.* v. *Banks* [1916] 2 K.B. 621, was wrong; that, in deciding that the accused must actually believe that the girl was over sixteen years of age, it goes further than s. 5 of the Criminal Law Amendment Act, 1885; that that section provided that the presence only of reasonable cause to believe that the girl was over the age of sixteen was to be a valid defence; that it did not say that the accused must in fact believe it; and that in the present case there was in fact reasonable cause, and that the judge's direction was wrong. Judge Beazley directed the jury that, in order to avail themselves of the defence afforded by s. 2 of the Act of 1922, the accused must in fact have believed that the girl was over the age of sixteen.

BRANSON, J., said that the evidence made it clear that, although there might have been reasonable cause to believe that the girl was over sixteen years of age, none of the appellants had in fact directed his mind to the question at all. Therefore none of them could say that he did in fact believe that she was over that age. It had been decided in *R.* v. *Banks*, *supra*, that, in such circumstances, a proviso similar to that in s. 2 of the Act of 1922 did not help the accused. Avory, J., said in that case [1916] 2 K.B., at p. 622, that the phrase "had reasonable cause to believe" meant "had reasonable cause to believe, and did in fact believe," that was, that the person charged believed on reasonable grounds that the girl was at least sixteen years of age. The court were not only bound by the decision in *R.* v. *Banks*, *supra*, but they thought it correct. The appeals must accordingly be dismissed.

COUNSEL: *Albert Crew*, for the appellants; *G. G. Raphael*, for the Crown.

SOLICITORS: *The Registrar, the Court of Criminal Appeal; The Director of Public Prosecutions.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

R. *v.* Collins.

Branson, Humphreys and du Parcq, JJ.
10th May, 1938.

CRIMINAL LAW—PROCEDURE—PLEA OF "GUILTY" AT PETTY SESSIONS—WITHDRAWAL AT QUARTER SESSIONS—APPLICATION FOR ADJOURNMENT REFUSED—DEPOSITIONS READ—VALIDITY—CRIMINAL JUSTICE ACT, 1925 (15 & 16 Geo. 5, c. 86), s. 13.

Appeal from conviction.

The appellant was convicted at Chester County Sessions of pavilion breaking and sentenced to eighteen months' imprisonment, with hard labour. Before the magistrates at petty sessions he had made contradictory statements. In answer to a question by the magistrate he had said: "I do not want to cause any unnecessary trouble, and it will be unnecessary for the witnesses to appear, as I plead 'Guilty' to the charge"; but he had already said: "I reserve my defence." At the trial at quarter sessions he withdrew the statement which he had made to the effect that he pleaded "Guilty." He there stated that he had a defence and applied for an adjournment in order that he might call witnesses, but that application was refused. The depositions of the witnesses were then merely read to the jury under s. 13 of the Criminal Justice Act, 1925. It was contended for the Crown that this was a proper case for the application of s. 13 of the Act of 1925; that the question of the adjournment was a matter in the discretion of the court; and that, whatever the summing up, no jury could have come to any other conclusion.

HUMPHREYS, J., delivering the judgment of the court, said that a more unequivocal plea of guilty than the statement of the appellant before the justices at petty sessions could not be found, and the justices had acted rightly under s. 13 of the Act in binding over the witnesses for the prosecution conditionally. When the appellant appeared before quarter sessions, he pleaded "Not guilty" and applied for the trial to be postponed in order that he might bring witnesses to prove an alibi. No injustice would have been done if that application had been granted; but the chairman refused it. The depositions were then proved and read to the jury, and on that the jury were invited to return a verdict. The Court of Criminal Appeal were satisfied that such a course was not intended by the Statute and could never have been contemplated by Parliament. The result had been to deprive the jury of the inestimable advantage of seeing the witnesses and observing their demeanour in the witness box, and to deprive the appellant of his right to put questions in cross-examination. Section 13 was passed with the object of saving time and expense when no injustice could possibly be done to anyone, and it could never have been contemplated that it could be used in effect to abolish in such a case as this the ordinary method of trial by jury. In the opinion of the court, it was most undesirable that such a case should occur again. What had in fact been done could not be said to be contrary to the Act, since the language of the section contained no words which seemed to make such procedure improper. The court could not, therefore, quash the conviction on that ground. But the summing up was totally inadequate and the conviction must therefore be quashed.

COUNSEL: *Daly Lewis*, for the appellant; *J. F. Marnan* for the Crown.

SOLICITORS: *Registrar of Court of Criminal Appeal; Haslewood, Hare & Co.*, for *Lake, New & Ellis*, Stockport.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Parliamentary News.

Progress of Bills.

House of Lords.

Aldridge Urban District Council Bill.
Reported, with Amendments. [19th May.
Bangor Corporation Bill.
Read Third Time. [25th May.
Bournemouth Corporation (Trolley Vehicles) Provisional Order Bill.
Read Third Time. [24th May.
Brixham Gas and Electricity Bill.
Read Third Time. [25th May.
Chichester Corporation Bill.
Read Third Time. [23rd May.
Children and Young Persons Bill.
Read First Time. [23rd May.
Coal Bill.
In Committee. [25th May.
Crewe Corporation Bill.
Reported, with Amendments. [19th May.
Harwich Harbour Bill.
Read Third Time. [25th May.
Housing (Rural Workers) Amendment Bill.
Read First Time. [24th May.
Increase of Rent and Mortgage Interest (Restrictions) Bill.
Read Third Time. [19th May.
Leasehold Property (Repairs) Bill.
Read First Time. [23rd May.
Limitations Bill.
Read First Time. [23rd May.
London Midland and Scottish Railway Bill.
Reported, with Amendments. [19th May.
London Passenger Transport Board Bill.
Read Second Time. [25th May.
Marriages Provisional Order Bill.
Read First Time. [23rd May.
Poor's Allotment in Hanwell Bill.
Read Third Time. [25th May.
Radcliffe Farnworth and District Gas Bill.
Reported, with Amendments. [24th May.
Redcar Corporation Bill.
Read First Time. [24th May.
Romford Gas Bill.
Reported, with Amendments. [24th May.
Saint Bartholomew's Hospital Bill.
Reported, without Amendment. [19th May.
Sea Fish Industry Bill.
Read Third Time. [25th May.
Sheffield Gas Bill.
Read Third Time. [23rd May.
Shropshire Worcestershire and Staffordshire Electric Power (Consolidation) Bill.
Reported, with Amendments. [19th May.
Stanmore Unused Burial Ground Bill.
Read Second Time. [25th May.
Surrey County Council Bill.
Read Third Time. [23rd May.
Warrington Corporation Water Bill.
Reported, with Amendments. [19th May.
Workmen's Compensation (Amendment) Bill.
Read Third Time. [25th May.

House of Commons.

Air Navigation (Financial Provisions) Bill.
In Committee. [23rd May.
Blackpool Improvement Bill.
Lords Amendments agreed to. [23rd May.
Chichester Corporation Bill.
Read First Time. [23rd May.
Children and Young Persons Bill (changed from "Children and Young Persons Act (1933) Amendment Bill").
Read Third Time. [20th May.
Derwent Valley Water Board Bill.
Reported, with Amendments. [19th May.
Divorce and Nullity of Marriage (Scotland) Bill.
Reported, with Amendments. [24th May.
East Lothian Water Order Confirmation Bill.
Considered. [25th May.
Evidence Bill.
Read Third Time. [20th May.
Harwich Harbour Bill.
Read First Time. [25th May.
Herring Industry Bill.
Read Second Time. [19th May.
Housing (Rural Workers) Amendment Bill.
Read Third Time. [23rd May.
Increase of Rent and Mortgage Interest (Restrictions) Bill.
Lords Amendment agreed to. [23rd May.
Ipswich Corporation (Trolley Vehicles) Provisional Order Bill.
Read First Time. [24th May.
Leasehold Property (Repairs) Bill.
Read Third Time. [20th May.
Lee Conservancy Catchment Board Bill.
Reported, with Amendments. [24th May.
Local Authorities and Local Government Officers (Joint Councils) Bill.
Withdrawn. [24th May.
Local Authorities and Local Government Officers (Joint Councils) (No. 2) Bill.
Read First Time. [25th May.
London and North Eastern Railway Bill.
Amendments considered. [20th May.
London County Council (Money) Bill.
Reported, with Amendments. [19th May.
London County Council (Tunnel and Improvements) Bill.
Amendments considered. [23rd May.
Marriages Provisional Order Bill.
Read Third Time. [20th May.
Mental Deficiency Bill.
Read First Time. [24th May.
Mining Subsidence Bill.
Read First Time. [25th May.
Newcastle and Gateshead Waterworks Bill.
Amendments considered. [23rd May.
Newcastle-upon-Tyne Corporation (Trolley Vehicles) Provisional Order Bill.
Read First Time. [24th May.
Official Secrets Acts (Amendment) Bill.
Read First Time. [24th May.
Ossett Corporation Bill.
Amendments considered. [23rd May.
Patents, etc. (International Conventions) Bill.
Read Third Time. [19th May.
Pier and Harbour Provisional Order (Clacton-on-Sea) Bill.
Read First Time. [19th May.
Pier and Harbour Provisional Order (Plymouth) Bill.
Read First Time. [24th May.
Redcar Corporation Bill.
Read Third Time. [23rd May.
Royal Sheffield Infirmary and Hospital Bill.
Reported, with Amendments. [19th May.
Sheffield Gas Bill.
Read First Time. [23rd May.
Southern Railway Bill.
Amendments considered. [20th May.
Surrey County Council Bill.
Read First Time. [23rd May.
West Midlands Joint Electricity Authority Provisional Order Bill.
Read First Time. [24th May.
West Surrey Water Bill.
Amendments considered. [23rd May.

Questions to Ministers.

POLICE PROCEDURE (STATEMENTS, SHORTHAND NOTES).

Mr. MUFF asked the Home Secretary whether his attention has been drawn to the suggestion of counsel at the Leeds Assizes that a shorthand clerk should be employed to take down statements both of the police and persons being examined prior to being formally charged with serious offences; and will he take steps to put this suggestion into operation?

Sir S. HOARE: I agree that it is desirable that so far as practicable any statement by an accused person which is tendered in evidence should be given in the accused's own words, and that is the practice generally followed by the police. But I do not think that it would be either desirable or practicable to lay down any general rule that all questions and statements in serious cases should be taken down in shorthand. The whole question of such statements was carefully considered by the Royal Commission on Police Powers and Procedure, and they pointed out that while certain general principles should be kept in mind it was impracticable to lay down any precise instructions as to the methods of taking such statement. [19th May.

AFFILIATION PROCEEDINGS (BLOOD TEST).

Mr. SORENSEN asked the Secretary of State for the Home Department whether his attention has been drawn to the

employment of a blood test in a recent legal case involving the question of paternity; and whether, in view of the acceptance of this test by the court, he proposes to take any steps to encourage or discourage the practice in similar cases?

THE UNDER-SECRETARY OF STATE FOR THE HOME DEPARTMENT (Mr. Geoffrey Lloyd): My right hon. friend has seen newspaper reports about this case. There has never been any doubt that, if each of the parties to affiliation proceedings is willing to submit to a blood test, evidence as to its results is admissible; and the publicity given to the recent case will, it is hoped, make the possibilities of the test more widely known to magistrates and others concerned. Legislation would, however, be required to make blood tests compulsory in cases of dispute as to paternity, and my right hon. friend can hold out no prospect of introducing legislation on this subject. [25th May.

Rules and Orders.

THE COUNTY COURT DISTRICTS ORDER, 1938. DATED APRIL 12, 1938.

I, Frederic Herbert Lord Maugham, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by subsection (2) of Section 2 of the County Courts Act, 1934,* and all other powers enabling me in this behalf, Do hereby order as follows:—

1. Subject to the provisions of paragraph 4 of this Order:—

(*a*) the District of every County Court mentioned in the first column of the Schedule to this Order shall be the area defined by reference to the Parishes set opposite the name of the Court in the third column, and a reference to a Parish by name in the third column means the whole Parish except where otherwise stated;

(*b*) the District of every County Court in London shall be the area defined in the said Schedule as the district of that Court by a description of the boundaries;

(*c*) the District of every County Court in the West Riding of Yorkshire shall be the existing District of that Court as altered by the next succeeding paragraph of this Order.

2.—(1) So much of every parish mentioned in the first column of the following Table as forms part of the district of the County Court set opposite thereto in the second column shall be transferred to and form part of the district of the County Court set opposite thereto in the third column.

Parish.	District from which Parish is transferred.	District to which Parish is transferred.
Sheffield	Buxton and New Mills	Sheffield
Sheffield	Bakewell	Sheffield
Brogden	Colne and Nelson	Skipton
Colsterdale	Leyburn	Ripon
Foggathorpe	Pocklington	Selby
Outseats	Sheffield	Bakewell
Eckington	Sheffield	Chesterfield
Holmesfield	Sheffield	Chesterfield
Stamford Bridge	York	Pocklington

(2) The parishes of Althorpe, Amcotts and Keadby shall cease to form part of the district of Thorne County Court and shall be transferred to and form part of the district of Scunthorpe and Brigg County Court.

3.—(1) In this Order "Parish" and "Civil Parish" have the same meaning as "Parish" in the Local Government Act, 1933.†

(2) Any Parish, Borough, Urban District or Rural District mentioned by name in this Order means the Parish, Borough, Urban District or Rural District as constituted and limited on the 1st day of April, 1938.

4.—(1) In relation to the Districts of the County Courts in the West Riding of Yorkshire, the County Courts (Districts) Order in Council, 1899,‡ as amended by subsequent Orders, shall have effect as further amended by paragraph 2 of this Order.

(2) Save as aforesaid all Orders by virtue of which the existing County Court Districts are constituted shall be revoked.

5. This Order may be cited as the County Court Districts Order, 1938, and shall come into operation on the 1st day of June, 1938.

Dated this 12th day of April, 1938.

Maugham, C.

This Order, so far as it relates to any County Court held for a Duchy of Lancaster district, is made with my consent.

Winterton,
Chancellor of the Duchy of Lancaster.

§ [Schedule.]

* 24 & 25 Geo. 5, c. 53.
† 23 & 24 Geo. 5, c. 51.
‡ S.R. & O. 1899, No. 178, printed as amended to 1903, S.R. & O. Rev. 1904, III County Court, E. p. 1. For subsequent amendments see "Index to S.R. & O. in Force, July 31, 1936" at pp. 195–8 and S.R. & O. 1936 (Nos. 1131 and 1301) I, pp. 277–9; 1937 (No. 1073) p. 531, and 1938 No. 116.

§ [The Schedule, which extends to 269 pages, is divided into three columns showing Court Towns and Circuit Numbers, Boroughs, Urban and Rural Districts, and Constitution by Civil Parishes. Copies of the Order, S.R. & O. 1938, No. 470/L.7, may be obtained from H.M. Stationery Office, price 6s. net.]

THE LOCAL LAND CHARGES (AMENDMENT) RULES, 1938. DATED MAY 10, 1938.

I, Frederic Herbert Lord Maugham, Lord High Chancellor of Great Britain, by virtue and in pursuance of the Land Charges Act, 1925,* and all other powers enabling me in this behalf, do hereby make the following Rules:—

1. A Rule or Schedule referred to by number in these Rules means the Rule or Schedule so numbered in the Local Land Charges Rules, 1934.†

2. In paragraph (1) of Rule 2 the words "Public Health Act, 1936."‡ shall be substituted for the words "Public Health Act, 1875."§

3. Paragraph (1) of Rule 4 shall be revoked and the following paragraph shall be substituted therefor:—

"4.—(1) For the purpose of registering a local land charge the proper officer to act as local registrar shall be the clerk, or the person for the time being authorised to act as clerk, of the local authority in whose favour the charge is created or by whom it is enforceable:

Provided that:—

(i) in the case of the following charges the proper officer shall be the clerk, or the person for the time being authorised to act as clerk, of the borough or district council in whose borough or district the land affected by the charge is situate:—

(*a*) planning charges other than those arising or created within the County of London or the City of London;

(*b*) local land charges, other than any planning charges, imposed by the Council of a county, borough (including a metropolitan borough), urban or rural district, or by the Common Council of the City of London, which affect land outside the county, borough, district or the City of London, as the case may be; and

(*c*) local land charges, other than planning charges, imposed by any registering authority other than an authority mentioned in paragraph (*b*);

(ii) in the case of planning charges arising or created within the County of London, the proper officer shall be the clerk, or the person for the time being authorised to act as clerk, of the London County Council;

(iii) in the case of—

(*a*) planning charges arising or created within the City of London, or

(*b*) local land charges (other than planning charges) which affect land within the City of London and which are enforceable by a local authority other than the Common Council of the City of London,

the proper officer shall be the town clerk, or the person for the time being authorised to act as town clerk, of the City of London.

4. In subparagraph (*b*) of paragraph (1) of Rule 11 the words "set out in paragraph (2) of this Rule" shall be substituted for the words "set out in the preceding paragraph."

5. In the First Schedule under the heading "Official Certificate of Search" the words "the subsisting entries referred to in the Schedule" shall be substituted for the words "the subsisting entries set out in the Schedule."

6. These Rules may be cited as the Local Land Charges (Amendment) Rules, 1938, and shall come into operation on the 23rd day of May, 1938, and the Local Land Charges Rules, 1934, shall have effect as amended by these Rules.

7. Copies of the Local Land Charges Rules, 1934, printed under the authority of His Majesty's Stationery Office, may be printed with any additions, omissions or substitutions directed to be made by these or any other amending Rules,

* 15 & 16 Geo. 5. c. 22.
† S.R. & O. 1934 (No. 285) I, p. 924.
‡ 26 Geo. 5 & 1 Edw. 8. c. 49.
§ 38 & 39 Vict. c. 55.

but with a footnote in each instance referring to such amending Rules; and the principal Rules so printed may be cited as the Local Land Charges Rules.

Dated the 10th day of May, 1938.

Maugham, C.

THE CHANCERY OF LANCASTER RULES (No. 1) 1938. DATED MAY 6, 1938.

The Right Honourable Edward Earl Winterton, M.P., Chancellor of the Duchy and County Palatine of Lancaster with the advice and consent of Sir John Bennett the Vice-Chancellor of the said County Palatine and with the approval of the Authority empowered to make rules for the Supreme Court in pursuance of the powers and authorities in that behalf given to him by the Chancery of Lancaster Acts 1850 to 1890* and all other powers and authorities enabling him in that behalf doth hereby order and direct as follows:—

1. Order XLVIII Rule 5A shall be amended so that after the words "that is to say" the said rule shall continue as follows:—

"Payment of moneys secured by mortgage or charge, sale, foreclosure, delivery of possession, whether before or after foreclosure, by the mortgagor, redemption, reconveyance, delivery of possession by the mortgagee."

2. (1) These Rules may be cited as the Chancery of Lancaster Rules (No. 1) 1938 and the Chancery of Lancaster Rules 1884† shall have effect as amended by these Rules.

(2) These Rules shall come into operation on the 16th day of May, 1938.

Dated the 6th day of May, 1938.

Winterton,
Chancellor.
John Bennett,
Vice-Chancellor.

Approved by the Rule Committee of the Supreme Court.
Claud Schuster.

* 13 & 14 Vict. c. 43; 17 & 18 Vict. c. 82; 53 & 54 Vict. c. 23.
† S.R. & O. Rev. 1904, VI, Lancaster (Court of Chancery) pp. 23–223 (reprinted as amended to Dec. 31st, 1903).

THE ORDER AS TO COURT FEES AND SOLICITORS REMUNERATION, 1938. DATED MAY 6, 1938.

The Right Honourable Edward Earl Winterton, M.P., Chancellor of the Duchy and County Palatine of Lancaster with the advice and consent of Sir John Bennett the Vice-Chancellor of the said County Palatine of Lancaster and with the approval of the Authority empowered to make rules for the Supreme Court in pursuance of the powers and authorities in that behalf given to him by the Chancery of Lancaster Acts 1850 to 1890* and all other powers and authorities enabling him in that behalf doth hereby order and direct as follows:—

1. In the Chancery of Lancaster (Court Fees) Order 1926† the words "as amended by the Order as to Court Fees and Solicitors Costs dated 28 November, 1884" in rule 1 thereof shall be annulled and the Court Fees and Solicitors Costs dealt with by the Order dated November 28, 1884‡ as to Court Fees and Solicitors Costs shall be deemed not to be increased, varied or amended by any Order subsequent to such Order dated November 28, 1884.

2. This Order may be cited as "The Order as to Court Fees and Solicitors Remuneration, 1938" and shall come into force on the 16th day of May, 1938.

Dated this 6th day of May, 1938.

Winterton,
Chancellor.
John Bennett,
Vice-Chancellor.

Approved by the Rule Committee of the Supreme Court.
Claud Schuster.

* 13 & 14 Vict. c. 43; 17 & 18 Vict. c. 82; 53 & 54 Vict c. 23.
† S. R. & O. 1926 (No. 1189), p. 730.
‡ S.R. & O. Rev. 1904, VI, Lancaster (Court of Chancery), p. 243.

A decision to ask every Member of Parliament representing a Scottish royal burgh to protest against certain sections of the Solicitors Amendment (Scotland) Bill was reached unanimously at a conference in Edinburgh of the Annual Committee of the Convention of Royal Burghs, held in the City Chambers, under the chairmanship of Sir Henry Keith, Hamilton. Mr. D. A. Thomson, Town Clerk of Ayr, moved that a protest be made against cl. 15 and 16 of the Bill, and that protests be sent to the Lord Advocate and the Secretary of State for Scotland, members of the Convention to approach their own Members of Parliament on the subject. This was agreed to.

Societies.

City of London Solicitors' Company.

ANNUAL MEETING.

The twenty-ninth annual general meeting of this Company was held at Guildhall on the 18th May. The Master, Mr. HERBERT S. SYRETT, took the chair and moved the adoption of the report of the Court of Assistants. He remarked that the membership continued to increase, the sixteen new members elected since June, 1937, having brought the total membership to 265. The court was satisfied that the Company did in fact fulfil a real need amongst City solicitors. There was no competition with The Law Society; on the contrary, the Company co-operated with the Society to the fullest possible extent and appreciated the great work which the Society did. Three members of the court were also members of the Council of The Law Society. Nevertheless, the Company was competent to deal with certain special problems affecting solicitors working in the City, and from time to time matters of great importance arose. He drew attention to the useful and instructive lectures given at the Carpenters' Hall, by Mr. S. E. Karminski on the Matrimonial Causes Act, 1938, and by Mr. F. P. M. Schiller, K.C., on bills of exchange. The lectures had been attended by a number of solicitors and their clerks and had fully justified themselves. The court wished to emphasise again its appeal to all members of the Company to undertake a reasonable number of poor persons' cases annually. The Company also paid attention to the provision of social intercourse for its members. The annual banquet had again been very successful; the members of the court had again had the pleasure of entertaining the members of the Company to dinner, and a successful sherry party for members and their ladies had been held at the Salters' Hall. The Company's golf challenge cup had been won by Mr. F. Gordon Petch, and a sub-committee was considering the conditions of competition for the foursome golf challenge cup presented by Mr. R. T. D. Stoneham. An increasing number of members had availed themselves of the library during the past year. The court recorded with great regret the death of four members. Past-Master G. Stanley Pott would retire from the Court of Assistants this year, but the Company would continue to benefit by his counsel and by the very useful connection effected by his membership of the Council of The Law Society.

The adoption of the report was seconded by Mr. A. L. SAMUEL and carried unanimously.

Mr. A. S. HICKS presented the annual account and balance sheet. The income and expenditure account showed a balance of £166 0s. 3d., and the Company's investments were now worth £3,139. The re-appointment of Mr. Hicks as honorary auditor, proposed by Mr. E. F. Iwi, was carried with loud applause. Mr. W. A. Bright, of Messrs. Alfred Bright & Sons, was nominated by the court to fill the vacancy left by the retirement of Mr. G. S. Pott. The Master proposed and Mr. Pott seconded his election. Mr. F. M. Guedalla, Past-Master, proposed, and Mr. T. H. Wrensted, Past-Master, seconded a vote of thanks to the Master.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve a recommendation of the Home Secretary that Mr. J. D. CASSWELL, K.C., be appointed Recorder of Salisbury, to succeed The Hon. Mr. Justice Asquith. Mr. Casswell was called to the Bar by the Middle Temple in 1910, and took silk this year.

The Lord Advocate has appointed Mr. L. HILL WATSON, K.C., to be Home Advocate-Depute in place of Mr. KING MURRAY, K.C., who has been appointed Chairman of the Scottish Land Court. Mr. Hill Watson was called to the Bar in 1921, and became an Advocate-Depute in 1936.

Notes.

Mr. E. Edward Bird, chairman of the Legal and General Assurance Society, has been appointed to a seat on the board of the Staveley Coal and Iron Company.

The Executive Committee of the Deptford Conservative Association has selected for recommendation as prospective candidate Mr. Eric Cuddon. Mr. Cuddon was called to the Bar by the Inner Temple in 1928.

Mr. Walter Holman, F.S.A.A., has been re-elected President of the Society of Incorporated Accountants. He had been President of the Society for the preceding year. Mr. Percy Toothill, F.S.A.A., has been re-elected Vice-President for a further year.

The Minister of Health, the Rt. Hon. Walter Elliot, M.C., M.P., has appointed Mr. S. F. S. Hearder to be his Private Secretary, Mr. H. F. Summers to be his Assistant Private Secretary, and Mr. Allan Chapman, M.P., to be his Parliamentary Private Secretary.

PROBATE, DIVORCE AND ADMIRALTY DIVISION.
(PROBATE).

PRACTICE NOTE.

The terms of settlement of a probate action should not contain any provision for the making of a grant to a particular person or persons.

If such a provision is included inadvertently in terms which are to be filed and made a Rule of Court, the Decree will be drawn without reference thereto and it will be disregarded upon application for a grant in the Registry.

The right or title to a grant will be determined by the Registrars in accordance with the existing law and practice.

H. F. O. NORBURY,
24th May, 1938. Senior Registrar.

LOCAL LAND CHARGES.

We are publishing at p. 438 of this issue the Local Land Charges (Amendment) Rules, 1938, which have been made by the Lord Chancellor under the Land Charges Act, 1925, as amended by the Law of Property (Amendment) Act, 1926. The Rules came into operation on the 23rd May, 1938.

The amendments will not affect the form of the register of local land charges.

Rule 3 of the Amending Rules is directed to the removal of doubts as to the registrar of local land charges in the City of London.

Rule 5 of the Amending Rules alters the form of the official certificate of search to be given when a requisition has been received by substituting a reference to entries "referred to" in the schedule to the certificate for the present reference to entries "set out" in the schedule. The object of the amendment is to enable entries in Part III of the register to be briefly mentioned instead of their being set out at length as a strict interpretation of the present Rule might be held to require.

An actual copy of any entry so mentioned can be obtained in the form of an office copy on payment of the prescribed fee of 2s. 6d.

Revised Forms of Requisition (Form L.L.C. 1) will shortly be available. Pending their issue the Forms now current should be corrected in manuscript.

Court Papers.

Supreme Court of Judicature.

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP II. MR. JUSTICE LUXMOORE. Non-Witness	MR. JUSTICE FARWELL. Witness Part II
	Mr.	Mr.	Mr.	Mr.
May 30	Ritchie	Hicks Beach	Blaker	*Ritchie
„ 31	Blaker	Andrews	More	*Blaker
June 1	More	Jones	Hicks Beach	*More
„ 2	Hicks Beach	Ritchie	Andrews	*Hicks Beach
„ 3	Andrews	Blaker	Jones	*Andrews

DATE.	GROUP II. MR. JUSTICE MORTON. Witness Part I.	MR. JUSTICE BENNETT. Non-Witness	GROUP I. MR. JUSTICE CROSSMAN. Witness Part I.	MR. JUSTICE SIMONDS. Witness Part II.
	Mr.	Mr.	Mr.	Mr.
May 30	*Jones	Andrews	*More	Hicks Beach
„ 31	*Ritchie	Jones	*Hicks Beach	Andrews
June 1	*Blaker	Ritchie	*Andrews	Jones
„ 2	More	Blaker	*Jones	Ritchie
„ 3	Hicks Beach	More	*Ritchie	Blaker

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

The Whitsun Vacation will commence on Saturday, the 4th day of June, 1938, and terminate on Tuesday, the 7th day of June, 1938 inclusive.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 9th June 1938.

	Div. Months.	Middle Price 25 May 1938.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	110¾	3 12 3	3 4 8
Consols 2½%	JAJO	74½	3 7 1	—
War Loan 3½% 1952 or after ...	JD	101½	3 9 2	3 7 11
Funding 4% Loan 1960-90	MN	113½	3 10 8	3 3 1
Funding 3% Loan 1959-69	AO	98½	3 0 11	3 1 6
Funding 2¾% Loan 1952-57	JD	96	2 17 4	3 0 6
Funding 2½% Loan 1956-61	AO	90½	2 15 3	3 1 7
Victory 4% Loan Av. life 22 years ...	MS	111	3 12 1	3 5 9
Conversion 5% Loan 1944-64 ...	MN	113	4 8 6	2 8 6
Conversion 4½% Loan 1940-44 ..	JJ	104½xd	4 6 3	2 7 6
Conversion 3½% Loan 1961 or after	AO	101½	3 9 0	3 8 1
Conversion 3% Loan 1948-53 ...	MS	102½	2 18 6	2 13 11
Conversion 2½% Loan 1944-49 ...	AO	99½	2 10 3	2 11 0
Local Loans 3% Stock 1912 or after	JAJO	87½	3 8 7	—
Bank Stock	AO	338½	3 10 10	—
Guaranteed 2½% Stock (Irish Land Act) 1933 or after	JJ	82½	3 6 8	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	89	3 7 5	—
India 4½% 1950-55	MN	112½	4 0 0	3 4 6
India 3½% 1931 or after	JAJO	92½	3 15 8	—
India 3% 1948 or after	JAJO	79½	3 15 6	—
Sudan 4½% 1939-73 Av. life 27 years	FA	109½	4 2 2	3 18 5
Sudan 4% 1974 Red. in part after 1950	MN	109½	3 13 1	3 0 10
Tanganyika 4% Guaranteed 1951-71	FA	109	3 13 5	3 2 11
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	106½	4 4 6	2 10 0
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	92	2 14 4	3 1 9
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	104	3 16 11	3 13 7
Australia (Commonw'th) 3% 1955-58	AO	88	3 8 2	3 17 6
*Canada 4% 1953-58	MS	109	3 13 5	3 4 7
*Natal 3% 1929-49	JJ	101	2 19 5	—
New South Wales 3½% 1930-50 ...	JJ	97	3 12 2	3 16 4
New Zealand 3% 1945	AO	91	3 5 11	4 10 7
Nigeria 4% 1963	AO	108	3 14 1	3 10 3
Queensland 3½% 1950-70	JJ	97	3 12 2	3 13 2
*South Africa 3½% 1953-73	JD	102	3 8 8	3 6 7
Victoria 3½% 1929-49	AO	97	3 12 2	3 16 10
CORPORATION STOCKS				
Birmingham 3% 1947 or after ...	JJ	86½	3 9 4	—
Croydon 3% 1940-60	AO	95	3 3 2	3 6 6
*Essex County 3½% 1952-72 ...	JD	103	3 8 0	3 4 10
Leeds 3% 1927 or after	JJ	86	3 9 9	—
Liverpool 3½% Redeemable by agreement with holders or by purchase...	JAJO	100	3 10 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	71½	3 9 11	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	85½	3 10 2	—
Manchester 3% 1941 or after ...	FA	86	3 9 9	—
Metropolitan Consd. 2½% 1920-49 ...	MJSD	97½	2 11 3	2 15 3
Metropolitan Water Board 3% "A" 1963-2003	AO	87½	3 8 7	3 9 9
Do. do. 3% "B" 1934-2003 ...	MS	89	3 7 5	3 8 5
Do. do. 3% "E" 1953-73 ...	JJ	97	3 1 10	3 2 10
*Middlesex County Council 4% 1952-72	MN	107	3 14 9	3 7 3
* Do. do. 4½% 1950-70	MN	111	4 1 1	3 7 5
Nottingham 3% Irredeemable ...	MN	86	3 9 9	—
Sheffield Corp. 3½% 1968	JJ	103	3 8 0	3 6 10
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ...	JJ	108	3 14 1	—
Gt. Western Rly. 4½% Debenture ...	JJ	117½	3 16 7	—
Gt. Western Rly. 5% Debenture ...	JJ	129½	3 17 3	—
Gt. Western Rly. 5% Rent Charge ...	FA	127½	3 18 5	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	126½	3 19 1	—
Gt. Western Rly. 5% Preference ...	MA	114½	4 7 4	—
Southern Rly. 4% Debenture ...	JJ	106½	3 15 1	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	108½	3 13 9	3 9 5
Southern Rly. 5% Guaranteed ...	MA	126½	3 19 1	—
Southern Rly. 5% Preference ...	MA	111½	4 9 8	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.